

4-1-1952

# The Liquor Question in Nebraska, 1880-1890

Joe A. Fisher

*Municipal University of Omaha*

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THE LIQUOR QUESTION IN  
NEBRASKA, 1880-1890

A Thesis

Submitted to the

Faculty of the Department of History and Government

Municipal University of Omaha

In Partial Fulfillment

of the Requirements for the degree of

Master of Arts

by

Joe A. Fisher

April 1952

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## ACKNOWLEDGEMENTS

The author wishes to express grateful appreciation for the valuable assistance rendered by the instructor, Dr. F.W. Adrian. Also, the very kind and patient assistance given by the librarians of the Omaha Public Library and the Nebraska State Historical Society in securing material for this paper.

J. A. F.

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## CHAPTER I

### INTRODUCTION

In most cases where the reform of some element of society is sought, the group advocating the reform and the group opposing the reform make up only a small fraction of the total population. The vast majority quietly remains aloof from the conflict and views the scene with little or no interest. This was the situation in the temperance movement between 1880 and 1890 in Nebraska.

The two equally fanatical factions in this instance were the business men who sold or manufactured alcoholic beverages on the one hand and the proponents of prohibition or temperance on the other. The temperance advocates had the idea that a large majority of the evils of society were directly attributable to the consumption of liquor, and therefore set out to rid society of corruption by abolishing the source. The manufacturers and distributors of liquor took the opposite view. In the attempt to preserve their means of livelihood, the liquor faction claimed that the manufacture and sale of liquor was an old and honorable business which was an asset to any state because of the men it employed, the agricultural products it consumed, and the large amount of money it paid into the federal, state, and local treasuries in the form of taxes.

In the middle of the conflict over prohibition was the State Legislature. Pressure was applied to the legislature by both sides and

it became a battleground on which both sides tried to further their aims. Unwilling at first to become embroiled in the conflict, the legislature took the role of an arbitrator in an attempt to pacify both sides and at the same time act for the good of the whole state. The legislation passed between 1880 and 1890 made an attempt to bring the liquor industry under more strict control, and at the same time, stop short of prohibition. This was the compromise solution worked out by the legislature in an effort to satisfy both sides.

As time passed, more elements of society who tried to remain neutral became embroiled in the contest. Even the political parties of the state, who normally refrained from taking a stand on any subject as controversial as prohibition, had to make known their position on the subject or look on while their adherents split into rival factions over the issue. Prominent citizens of Nebraska and the surrounding states were drawn into the controversy and questioned as to their opinion on the subject. Those citizens who strongly supported one side or the other were soon making speeches throughout the state on the faults or benefits of prohibition. In many of the smaller towns of the state, it was impossible for a politician to seek a municipal office and have any chance of gaining it without first making known his views on prohibition.

It was during this period, 1880 to 1890, when the prohibition movement first became significant in Nebraska, that the goals, arguments, and methods of both sides were revealed in an almost unvarying pattern,

and the course the prohibition contest was to take was completely mapped out. It was soon discovered that the more stringent legislation did little to appease the temperance groups, although in some cases it was regarded as a step on the road to complete prohibition. Seeing that the prohibition faction of the state was unwilling to compromise on a just solution for both sides, the State Legislature decided that the time had come to take some definite action.

By this time, events had progressed so far that it was impossible for the legislature to find a solution short of giving the temperance movement what it asked for - - the submission of a prohibition amendment to the voters of the state. Since both sides felt sure of victory and were favorable to the idea, the twenty-first session of the State Legislature decided to pass a bill submitting the question to the people feeling that nothing less than a decision by the voters of the entire state would settle the controversy. As soon as that session of the State Legislature ended, the campaign began. Platforms were drawn, pledges of support were secured, and debates were held on the question of prohibition, although election day was a year and one-half away.

The people of the state went to the polls in November of 1890, and gave their verdict. As soon as the prohibitionists found they had suffered defeat by over 50,000 votes, they began to charge that the liquor interests of the state had intimidated and otherwise corrupted the voters. The temperance organizations of the state protested that the election was not honest, but to no avail. In testimony taken on



events during the election, the officials found little or no evidence of corruption and the results were declared final.

Thus the period 1880 to 1890 was a decade of bitter warfare between the prohibitionists and the friends of liquor. This contest culminated in the defeat of a prohibition amendment at the hands of the voters. The period, however, did see the passage of the Slocumb Law which provided for more stringent regulation of liquor than did the laws already on the statute books.

## CHAPTER II

### THE LIQUOR QUESTION BEFORE 1881

The first prohibition law which applied to the area of the United States that is now Nebraska, was enacted by the Congress of the United States in 1835. It forbade anyone carrying alcoholic beverages into Indian country, not because of pressure placed upon Congress by prohibition groups, but for the very practical purpose of keeping the Indians from becoming intoxicated and attacking the fur trappers passing by. Due to the immense area this law applied to, it was almost impossible to enforce. There was little chance of traders, who included whiskey among their trade goods, being caught bringing it up the Missouri River.<sup>1</sup>

Following the establishment of the Nebraska Territory in 1854, the Territorial Legislature passed the second prohibition law governing the area. This law forbade the manufacture, giving away, or sale of any intoxicating liquors to be used as a beverage within the territory of Nebraska. The penalties for violation of this act were a fine of not less than ten nor more than one hundred dollars, or imprisonment in the county jail for not more than ninety days, or both.<sup>2</sup> This act, approved March 16, 1855, was completely ignored by the residents.

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1. A.E.Sheldon, Nebraska, The Land and the People, Volume I, p. 199.

2. Laws of the First General Assembly of the Territory of Nebraska, p. 158.

of the Territory and no attempt was made by territorial officials to enforce it.<sup>3</sup>

Three years later the first license law of the Territory was passed. Under the terms of this act, the county commissioners of any county in the Territory were empowered to grant a license to any resident of the Territory who could present a petition signed by ten freeholders attesting that he was a man of respectable character and standing. With the petition, the applicant had to post a bond of not less than five hundred dollars, nor more than five thousand dollars, to be forfeit if he was convicted of running a disorderly house during the period of his license. The cost of the license was not less than twenty-five dollars, nor more than five hundred dollars, and was to be issued for not less than six months, nor more than one year. In addition to the above, the licensee was made responsible for all damages arising from his sales. There were also the usual rules included against sales to minors and Indians.<sup>4</sup> The responsibility for setting up the exact fees and putting this law into effect was placed in the hands of the local authorities who usually enforced the minimum requirements.<sup>5</sup>

In 1867, when Nebraska entered the Union as the 37th state, the License Law of 1858 remained in force as a state law as did many

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3. J. W. Savage and J. T. Bell, History of the City of Omaha, Nebraska, p. 175.
  4. Laws of the Fifth General Assembly of the Territory of Nebraska, p. 256.
  5. Sheldon, Nebraska, Volume I, p. 484.

other acts of the Territorial Legislature. It was provided in paragraph one of the section entitled "Schedule" of the state constitution, "That no inconvenience may arise from the change of territorial government to a state government, it is declared that all rights, suits, actions, prosecutions, judgments, recognizances, claims and contracts, both as respects persons and bodies corporate, shall continue and be enforced as if no change had taken place, and all laws now in force shall remain in force until altered, amended, or appealed by the legislature."<sup>6</sup>

The 1870's brought a large migration of foreign born, composed largely of Germans, Bohemians, and Irish, into the state, who brought their social drinking customs with them. Here was a new demand for beer and whiskey which was met by the establishment of small cheap saloons in almost every town and city in the state. To regulate these saloons, the law of 1858 was used and the license fees were usually set at one hundred dollars a year, due to the friendly feeling between the politicians and the saloon keepers.<sup>7</sup>

Opposition to the establishment of these disorderly saloons was not long in coming. It started among the churches of the state and was taken up by the Good Templar organizations. A temperance conference was held in Lincoln on August 10, 1874 by leaders in the Republican Party. In spite of the strong agitation on the part of the

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6. Laws of the First, Second and Third Sessions of Legislative Assembly of the State of Nebraska, p. 26.

7. Sheldon, Nebraska, Volume I, p. 484.

dry wing in an effort to persuade their fellow members to come out in support of a prohibition amendment, the leaders of the party decided that it would be to their disadvantage to alienate the wet wing by giving the temperance people their support. The temperance wing thereupon broke with the main body and met in Lincoln on September 9, 1874, forming the state's first Prohibition Party. The organization of the new party was established and legal prohibition was adopted as the party platform.<sup>8</sup> Candidates were nominated for state offices in the Election of 1874, and the party received 1,346 votes out of over 35,000 votes cast in the state. Discouraged by the outcome, the Prohibition Party began to disintegrate and most of the members returned to their old party.<sup>9</sup>

The year 1877 brought the passage of an act to prohibit the sale of liquor within three miles of a place of worship. "Place of worship" in this case meant any place where people gathered to worship God, ranging from a church built in the normal manner, to a small gathering of people under a few trees or in an open field. Penalty for the violation of this act was a fine of from twenty to one hundred dollars.<sup>10</sup> This gave the state an appearance of "patchwork prohibition" affecting a considerable area of the state, although the enthusiasm for the enforcement of the act in each

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8. Ibid., p. 485.

9. Ibid., p. 487.

10. Laws of the Fourteenth Legislative Assembly of the State of Nebraska, p. 6.

locality played a big part in the extent to which liquor sales were prohibited.<sup>11</sup>

In 1879, another bill was introduced in the State Legislature to "prevent the manufacture, sale and purchase of all spirituous liquors, wines, beer and even cider."<sup>12</sup> This act met the defeat in store for all the many attempts at complete prohibition in the State of Nebraska for the next thirty-seven years, but the prohibitionists weathered their set-backs and continued their agitation.

In January of 1880, there was a change apparent in the attitude of the temperance supporters toward the liquor question. Up to this time, all temperance work had been scattered and sporadic. Now the temperance advocates were to begin in earnest to prepare for the next session of the State Legislature, one year away.

For the last ten years, there had been occasional speakers in the state speaking on the evils of liquor and proposing the passage of a prohibition law as the only solution. These speakers accomplished very little because there were few organized groups to go ahead of them and publicize their mission. With the dawn of the year 1880, it was soon apparent that things were going to be different.

On January 7, 1880, Dr. D. Banks McKenzie, former head of the Appleton Temporary Home for Inebriates in Boston, arrived

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11. Sheldon, Nebraska, Volume I, pp. 542-3.

12. Ibid., p. 564.

in Omaha to give a series of lectures in favor of the temperance cause.<sup>13</sup> The Omaha Daily Herald was very cooperative with the Women's Christian Temperance Union and the local Good Templar organization in giving Dr. McKenzie advance publicity, due mainly to the fact that at this time temperance speakers were still a novelty and therefore news. Meetings were held two and three times a week and Dr. McKenzie had several audiences of over two hundred people. While Dr. McKenzie was the main speaker, several local supporters gave talks on the conditions in Omaha and the rest of the state.

On January 16, following a meeting at the court house at which Judge Hawes of the police court spoke, General Estabrook suggested that a "reform club" be formed. This suggestion received immediate action, and Captain Payne, a local army man stationed at Fort Omaha, was elected president.<sup>14</sup>

For the remainder of the month this reform club, named the McKenzie Reform Club after its chief figure, met nightly giving lectures, asking for contributions, registering new members at 25¢ each, and persuading outsiders to sign the pledge to abstain from all intoxicants.<sup>15</sup> With the money gained through contributions and dues, the club rented the building on the northwest corner of Sixteenth and Dodge for its club and coffee rooms.<sup>16</sup>

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13. The Omaha Daily Herald, January 8, 1880, p. 8.

14. Ibid., January 17, 1880, p. 8.

15. Ibid., January 20-22, 1880, p. 8.

16. Ibid., March 11, 1880, p. 8.

On January 28, Dr. McKenzie left for Salt Lake City to continue his work. After his departure, enthusiasm for the temperance cause in Omaha began to wane, and by the middle of May, only an occasional lecture or some social event was being held.<sup>17</sup>

The history of the McKenzie Reform Club is typical of many reform clubs throughout the state in the year 1880. They were founded by zealous opponents of liquor only to run strongly for a short time and then, either through the loss of the founder or the fact that the people lost interest quickly, they slowly disintegrated and soon disappeared completely from the picture.

The one temperance organization which continued throughout the period was the Women's Christian Temperance Union. Founded in Lincoln in 1875,<sup>18</sup> they are actively campaigning against intemperance today. In 1880, they were just getting started in Omaha, and beginning to spread over the state. They used the same type of methods as the reform clubs, but were much more active. They set up coffee rooms, reading rooms, and restaurants to lure customers away from the saloons in their individual areas. They also presented petitions to the various local officials charged with regulating the saloons in attempts to limit the operations of the saloons as much as possible within the regulations of the License Law of 1858.

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17. Ibid., May 21, 1880, p. 8.

18. J.P. Watson, "The Evolution of the Temperance Movement in Nebraska", p. 14.



Typical of these petitions was the one presented to the Omaha City Council in September of 1880 requesting that the saloons of the city be closed on Sunday.<sup>19</sup> This petition was later to be enacted into law following the passage of more stringent license legislation by the State Legislature in 1881.

Perhaps the Women's Christian Temperance Union's greatest contribution to the temperance cause was the importation of lecturers into the state. One of the most famous of these lecturers sponsored by the Women's Christian Temperance Union was Frances E. Willard, recently elected president of the national organization of the Women's Christian Temperance Union. In reporting the approach of Frances Willard's lecture, the Omaha Daily Herald referred to her as the "Queen of the Temperance Speakers."<sup>20</sup> None of the local papers saw fit to report the content of Frances Willard's address, but the Omaha Republican referred to it as a "beautiful, sensible and practical temperance address," and gave as their reason for not printing the text, "the press of matter compelling us to forego the full report."<sup>21</sup> This was not an uncommon means of avoiding this controversial subject employed by papers of the period who wished to remain neutral.

The content of lectures by temperance speakers throughout this period varies very little, and is best summed up by Robert G. Ingersoll in a lecture on intemperance quoted on the editorial page of the Omaha

19. Omaha Daily Herald, September 9, 1880, p. 8.

20. Ibid., April 11, 1880, p. 8.

21. Omaha Daily Republican, April 13, 1880, p. 4.

Daily Herald as follows:

Intemperance cuts down youth in its vigor, manhood in its strength, and age in its weakness. It breaks the father's heart, bereaves the doting mother, extinguishes natural affections, erases conjugal love, blots filial attachments, blights parental hope, and brings down mourning age in sorrow to the grave. It makes wives, widows; children, orphans; fathers, fiends; and all of them paupers and beggars. It feeds rheumatism, arouses gout, welcomes epidemics, invites cholera, imports pestilence, and embraces consumption. It covers the land with idleness and crime, it fills your jails, supplies your almshouses, and demands your asylums. It engenders controversies, fosters quarrels, and cherishes riot. It crowds your penitentiaries, and furnishes victims for the scaffolds. It is the blood of the gambler, the element of the burglar, the prop of the highway man, and the support of a midnight incendiary. It countenances the liar, respects the thief, esteems the blasphemer. It violates obligations, reverences fraud, and honors infamy. It hates love, scorns virtue, and slanders innocence. Incites the father to butcher his helpless offspring and the child to grind the parental age. It burns up men, consumes women, detests life, curses God and hates heaven. It suborns witnesses, nurses perfidy, defiles the jury box and judicial ermine, It bribes votes, disqualifies voters, corrupts elections, pollutes our institutions, and endangers government. It degrades the citizens, debases the legislature, dishonors the statesman, and disarms the patriot. It brings shame, not honor; terror, not safety; despair, not hope; misery, not happiness; and with the malevolence of a fiend, it calmly surveys its frightful desolation, and unsatiates with havoc, it kills peace, poisons felicity, ruins morals, blights confidence, slays reputation, and wipes out national honor, then curses the world and laughs at its ruin. It does that and more -- it murders the soul. It is the sum of all crimes, the mother of all abominations, the devils best friend and God's worst enemy.<sup>22</sup>

Many of the temperance speakers of the period used plainer language than R. G. Ingersoll, and depended more on local happenings to illustrate their points, but the content was nearly always the same,

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22. Omaha Daily Herald, January 11, 1880, p. 6.

and only the words were different.

The speeches of the anti-temperance element on the other hand, varied to meet the changing conditions of the times. Following no set pattern, the anti-temperance groups which were organized in 1881 to combat the growing strength of the prohibition advocates, were at first opposed to prohibition. After the passage of the first high license law, they changed their arguments to oppose this. When they realized that the high license law had become an asset, they rephrased their arguments again and favored high license as a lesser evil than prohibition.

The liquor situation in 1880 which the temperance advocates sought to change, was still governed by the license law of 1858. Under this regulation all forms of cheap saloons had flourished. All that was necessary in order to go into business was one hundred dollars for the license fee and credit for three or four hundred dollars more for saleable goods.<sup>23</sup> With a population of 30,518,<sup>24</sup> Omaha had one hundred and forty-seven licensed saloons.<sup>25</sup> From these saloons and their associated wholesale dealers, the school fund of the City of Omaha received \$15,983.75 from the sale of licenses. This amount, when added to the fines paid by the liquor industry, produced a grand total of \$22,624.25 over the one-year period from April 1, 1879,

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23. Ibid., January 17, 1880, p. 8.

24. House of Representatives, Miscellaneous Document No. 42, Volume I, p. 251.

25. Omaha Daily Herald, January 17, 1880, p. 8.

to March 31, 1880.<sup>26</sup>

The license revenue was not so lucrative for the schools in the remainder of the state, but, for the first time since the law was passed in 1858, the price of a liquor license was being raised in some areas over the usual one hundred dollars a year. In Lincoln, with a population of 13,003,<sup>27</sup> there were eight saloons paying a total of \$1,000 into the school fund or \$125 each.<sup>28</sup> In contrast to Omaha and its one hundred and forty-seven saloons, Pawnee City had no licensed saloons.<sup>29</sup> This did not necessarily mean that there was no liquor for sale in Pawnee City, as all drug stores had the legal privilege of selling alcoholic spirits for "medicinal purposes". Between these two extremes, the other small towns of the state which had saloons were beginning to raise their license fees. Holt County raised its license fee from one hundred to two hundred and fifty dollars a year,<sup>30</sup> Blue Springs established a fee of three hundred dollars for the sale of beer and six hundred dollars for the sale of "spirituous liquors,"<sup>31</sup> and Valparaiso and David City set their license fees at five hundred dollars.<sup>32</sup>

26. Ibid., April 14, 1880, p. 8.

27. House of Representatives, Miscellaneous Document No. 42, Volume I, p. 253.

28. Omaha Daily Herald, July 2, 1880, p. 8.

29. Ibid., May 2, 1880, p. 4.

30. Ibid., May 28, 1880, p. 8.

31. Ibid., August 10, 1880, p. 4.

32. Ibid., December 4, 1880, p. 3.

Plattsmouth, Nebraska, was the first town in the state to institute a feature soon to be incorporated into the Slocumb Law passed in 1881 by the State Legislature. The town council passed an ordinance providing that the druggists must pay the five hundred dollar fee for a saloon license if they were to "accommodate customers from behind the prescription counter."<sup>33</sup>

At the same time that most of the towns of the state were increasing their school funds through increased license fees, there was at least one county in the state which was opposed to this "legalized vice."<sup>34</sup> In Valley County, the county commissioners were doing their best to stop the liquor traffic by refusing to grant saloon licenses, and by arresting those persons who attempted to operate illegally.<sup>35</sup>

On December 10, 1880, the Omaha Daily Herald gave an accurate preview of the bitter battle which was in store for both sides when a reporter interviewed "Anti-liquor Apostle" Fitch, a local temperance supporter.<sup>36</sup>

Fitch stated that the temperance organizations throughout the state intended to begin presenting petitions favoring a prohibition amendment on the opening day of the State Legislature, and predicted a majority of favorable votes in both houses.<sup>37</sup>

These petitions as described by the Omaha Daily Herald were

33. Ibid., May 5, 1880, p. 5.

34. Ibid., December 10, 1880, p. 3.

35. Ibid., September 28, 1880, p. 4.

36. Omaha Daily Herald, December 10, 1880, p. 3.

37. Ibid.

"elaborately prefaced by an exposition of the evils of alcohol traffic, making policemen and jails necessary, beggaring innocent women and helpless children, and misemploying capital." On the existing license law it stated, "The present law elevates a cause of crime and vice to the rank of legitimate business. Years of trial have proved the present law fatally defective and entirely inadequate to remedy the evils that threaten the social, civil, and political life of Nebraska. Those towns that have prohibited the traffic are the only places where the law has been in any sense a success."<sup>38</sup>

Asked the question whether or not the prohibition people would set up a third party, Fitch replied that "It has been the desire of our leaders to keep it out of politics, and make no third party issue. But if the defeat should continue, I don't suppose the leaders could control the desire of the masses to make a party."<sup>39</sup>

After 1854, the Territory of Nebraska had had a prohibition law which had never been enforced, and a license law which provided for almost no regulation on saloons. In the 1870's the agitation for more stringent regulations began, and a few minor changes in the regulations resulted.

At the close of the year 1880, the State of Nebraska was spotted with cheap saloons licensed by local authorities at a cost to the saloon owner of from one hundred to six hundred dollars a year. Other than

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38. Ibid.

39. Ibid.

the collection of the license fee, there was almost no regulation imposed upon these saloons by the local law enforcement officials. The saloon keeper chose his own hours, usually twenty-four hours a day, seven days a week, and his business establishment usually became the meeting place of the unlawful element of the community. This was the situation the proponents of prohibition set out to change. Thus the stage was set for the Sixteenth Session of the State Legislature.

CHAPTER III  
THE SLOCUMB LAW

When the sixteenth session of the State Legislature convened in January of 1881, the proponents of prohibition were on hand in full force. Claiming that they had the necessary majorities in both houses to pass a prohibition amendment,<sup>1</sup> the proponents of prohibition filled the galleries of both houses of the legislature to make sure their representatives did not back down on their pledges.<sup>2</sup>

On January 12, the petitions favoring the submission of a prohibition amendment to the people were presented to the legislature, heralding the "flood" which was to come during the next two weeks.<sup>3</sup> Besides attending the sessions of the legislature during the day, the prohibition advocates also appeared in full strength in the evening. They held rallies, meetings in the streets, and parades around the state capitol, all in full view of the legislature, which could not ignore them because of their large numbers.<sup>4</sup>

While pressure was being applied directly by the prohibition advocates in Lincoln, the anti-prohibition forces were also applying pressure from a distance. On January 1, in expectation of the activities of the anti-liquor group, the Omaha Daily Herald printed

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1. Omaha Daily Herald, January 13, 1881, p. 8.
  2. The Omaha Daily Bee, February 11, 1881, p. 1.
  3. Omaha Daily Herald, January 13, 1881, p. 8.
  4. Ibid., January 21, 1881, p. 5.



an editorial giving figures on the amount of money paid the farmers for grains by the beer manufacturers in Omaha.<sup>5</sup> In this same issue, the editors also printed a letter from the Metz Brothers Brewing Company stating that the breweries of the state would soon be able to use all the barley raised in the state.<sup>6</sup> This editorial was answered by a letter from S. H. King, Secretary of the Prohibition Committee, stating that the editorial had neglected to include the \$600,000 the breweries took from the people of the state through the sale of intoxicating beverages. Also, "for every dollar the distilleries and brewers have ever paid into the state, the people have paid more than one hundred dollars as a result of the traffic. The same amount of capital, as is invested in the breweries of Omaha, invested in a boot and shoe factory would give ten times the employment and be a blessing, not a curse."<sup>7</sup>

On January 18, the Omaha Daily Republican printed a two and one-half column editorial giving figures in opposition to prohibition. Under headlines such as "Disastrous effects it would have on the welfare and prosperity of Nebraska," "An immense amount of labor and capital would be driven from the state," "Hundreds of thousands of dollars would be taken out of our farmers' pockets," and, "Beware of the fate of Kansas, where a prohibitory law has retarded business and immigration, and now the people are cursing their folly," the editorial

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5. Ibid., January 1, 1881, p. 4.

6. Ibid., p. 8.

7. Ibid., January 4, 1881, p. 5.

read in part as follows:

Temperance in all things is generally to be commended, while excess should always be deprecated. Fanatic zeal, however, in any cause, and more particularly in the temperance movement, leads to results that are detrimental and damaging to the welfare and prosperity of the community.

First take the example of the Willow Springs Distillery of this city.

This distillery alone employs one hundred men, most of whom have families depending upon them for support. The payroll amounts to \$5,000 per month, or \$60,000 per year. The consumption of fuel amounts to 20 tons a day, or about 6,000 tons per annum. The following is the grain consumption: Corn, 27,000 bushels per month, 324,000 bushels per year; Rye, 3,000 bushels per month, 36,000 bushels per year; Wheat, 2,500 bushels per month, 30,000 bushels per year; Malt 4,000 bushels per month, 48,000 bushels per year; Oats, 500 bushels per month, 6,000 bushels per year. Total amount of grain consumed is 444,000 bushels. Total production of spirits, alcohol, and whiskey during the past year, 1,449,946 gallons. Amount of tax paid, \$1,295,851.40. Total sales for 1880, \$1,535,000. Total sales of Iler & Company, wholesale liquor store, \$400,000.

So much for the distillery. Now, then let us look at the grain consumption of the breweries. The Metz Brewing Company during the past year bought 45,460 bushels of barley, costing \$9,236; 18,300 bushels of malt, costing \$19,215. The Columbia Brewery purchased about 1,600 bushels of malt. King's Omaha Brewery purchased about 45,000 bushels of barley.

We have in this state of a population of 450,000 -- of whom, it is said, 150,000 are Germans, 25,000 Frenchmen, 40,000 Englishmen, 30,000 Irish and Scotch; all of whom have been born raised and educated to believe, and do conscientiously believe that the use of beer and wine as a beverage is agreeable and healthy -- their ancestors before them drank liquor for centuries and lived to good old age, and their descendants drink wine and beer now, and they spring from nationalities that boast of the finest soldiers, the best scholars, and the most distinguished statesmen in the world.<sup>8</sup>

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8. Omaha Daily Republican, January 1, 1881, p. 5.

On January 17, House Bill No. 82 was introduced in the House of Representatives calling for the submission of a prohibition amendment to the people of the state in November of 1882.<sup>9</sup> The same type of bill was submitted almost simultaneously to the Senate,<sup>10</sup> but this body was content to let all the action take place in the house, and therefore allowed the bill to be submitted and re-submitted to committees, never letting it come to an actual vote.

While the prohibition amendment was holding the almost complete attention of both the public and the legislators, S. R. Jackson of Douglas County introduced in the House, "A bill for an act to amend section 586 of chapter 53 of the criminal code, entitled 'License and sale of liquor'." This bill was read once and ordered to second reading.<sup>11</sup> Thus on January 12, the first high license law was introduced in the legislature, read once, and dropped back out of sight without even a comment by the two opposing factions.

This was the first of seven bills introduced in the House of Representatives to change the license laws, but the supporters of prohibition took no notice of them until action on the prohibition amendment began to slow down. The first objection came on February 1, when a petition was received from Boone County stating that high license laws favored the city over the county in revenue, and pro-

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9. Omaha Daily Herald, January 18, 1881, p. 5.

10. Ibid., January 30, 1881, p. 8.

11. House Journal-1881, p. 114.

hibition was the only just solution.<sup>12</sup>

To put further pressure on the legislature, S. H. King, in a letter to the Omaha Daily Herald, claimed that the temperance organizations throughout the state had a membership of 200,000, including children.<sup>13</sup> Since the population of the State of Nebraska, according to the census of 1880 was 452,402,<sup>14</sup> the vast majority of this membership must have been non-voting women and children, as the Prohibition Party had received only 1,346 votes in the Election of 1874.<sup>15</sup>

On the liquor side of the argument, T. J. Boller of Douglas County, the liquor stronghold of the state, introduced a petition containing 3,241 signatures opposing prohibition.<sup>16</sup> In an editorial in this same issue, the Omaha Daily Herald stated that Church Howe, a leading supporter of the prohibition amendment in the legislature, intended to submit the prohibition question to the people to get it out of the hands of the legislature.<sup>17</sup>

Meanwhile, the State Legislature was holding out against the pressure placed upon them by the prohibitionists. In an editorial prediction, the Omaha Daily Herald stated that S. R. Jackson's

12. Omaha Daily Herald, February 2, 1881, p. 1.

13. Ibid., p. 8.

14. Statistics of the Population of the U. S. at the Tenth Census, 1880, p. 70.

15. See Chapter Two, p. 8.

16. Omaha Daily Herald, February 5, 1881, p. 5.

17. Ibid., p. 4.

high license bill would fail, but that the prohibition amendment still had a chance even though some predicted its defeat by two votes.<sup>18</sup>

In an article on February 14, the Omaha Daily Bee stated that "it is quite apparent that some little filibustering is being indulged in in this bill [the prohibition amendment], to stave off the vote upon it until after Tuesday next, when Jackson's high license bill comes up for consideration at 2:30 p.m. and it would be safe to suppose that this bill will pass in preference to the prohibitory law, which will die in consequence."<sup>19</sup> These predictions were very near the actual chain of events. The House began to consider the license legislation and the prohibition amendment began to lose ground in consequence. On February 23, it was brought to a vote in a closed session of the House. The vote was forty-nine in favor of submission, and twenty-three opposed, with fifty-one votes being necessary to pass it.<sup>20</sup> By way of preparing for the next legislative session, the Good Templars of Valparaiso offered five dollars for the name and photograph of each legislator who voted against the prohibition amendment.<sup>21</sup>

With the defeat of the prohibition amendment, the attention of the legislature and the public was turned full force upon the high license

18. Ibid., February 3, 1881, p. 4.

19. The Omaha Daily Bee, February 14, 1881, p. 1.

20. Omaha Daily Republican, February 25, 1881, p. 1.

21. Omaha Daily Herald, February 24, 1881, p. 4.

legislation. Up to this time, S. R. Jackson's high license bill had moved in and out of Committee, being recommended favorably three times, and finally came to a vote of the House sitting as a Committee of the Whole. R. B. Dailey, Chairman of the Committee of the Whole, recommended that consideration of this bill be postponed until other legislation of the same nature had been considered.<sup>22</sup> This recommendation, upon being accepted, killed Jackson's bill. Out of the seven bills introduced into the House by this time,<sup>23</sup> dealing with amendments to the license legislation then in force, all had died by this same means with the exception of Bill No. 216. "This is the bill which took the place of Mr. Jackson's for the reason that it covered the same ground and more."<sup>24</sup> While this statement was very true, there was also another very significant reason for the legislative preference of Slocumb's bill over Jackson's. This was the fact that Jackson's bill called for a one thousand dollar license fee for every saloon in the state, while the license fee for saloons in towns of less than ten thousand population under Slocumb's law was only five hundred dollars.

Bill No. 216 was introduced in the House on February 7, 1881 by J. T. Slocumb<sup>25</sup> from the town of Fairbury in Jefferson County. Shifted from one committee to another, it was finally placed in the

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22. House Journal-1881, p. 608.

23. Bills Number 39, 71, 85, 216, 282, and 291.

24. The Omaha Daily Bee, February 24, 1881, p. 1.

25. House Journal-1881, p. 371.

general file with the recommendation that it be acted upon.<sup>26</sup> After being recommended favorably twice by the Committee of the Whole,<sup>27</sup> it was finally read for the third time and passed by a vote of 62 to 16 on February 23.<sup>28</sup> Out of a total membership in the House of seventy-four Republicans, eight Democrats, and one Independent, its passage was opposed by seven Democrats, eight Republicans, and the lone Independent. The other Democrat, together with five Republicans, were absent and not voting.<sup>29</sup>

Bill No. 216 was then sent to the Senate on February 24, and was read for the first time on the same day.<sup>30</sup> The next day it was read for the second time and recommended favorably by the Committee of the Whole.<sup>31</sup> Then the Senators under the influence of the liquor lobby began to act. Six amendments were proposed, one immediately following another, which if accepted, would have nullified the intent of the legislation completely.<sup>32</sup> Each of these amendments was voted down as soon as it was proposed,<sup>33</sup> and the bill was returned to the House intact on the next day.<sup>34</sup> The vote for passage was 22 to 8, with the opposition composed of two Democrats and six Republicans. One Democratic senator voted in opposition to his party, which was strongly opposed to any form of more

26. Ibid., p. 527.

27. Ibid., pp. 609 and 647.

28. Ibid., pp. 737-8.

29. Ibid.

30. Senate Journal-1881, pp. 476 and 481.

31. Ibid., pp. 511 and 523-6.

32. Ibid., pp. 523-6.

33. Ibid.

34. Ibid., p. 539.

stringent liquor legislation, and supported the bill.<sup>35</sup> Therefore, the complete support of Bill No. 216 in the legislature was the Republican Party, with the exception of one Democrat.

Chapter 61 of the General Laws of Nebraska-1881, formerly House Bill No. 216, was named the Slocumb Law after its sponsor by the newspapers in reporting its passage, and it retained this name. This law, with minor modifications made from time to time, established the regulations which were to govern the sale of liquor in the State of Nebraska well beyond the period under consideration here. As originally passed by the House, it contained thirty sections,<sup>36</sup> but sections twenty through twenty-two were eliminated before the final passage because their contents were contained in general statutes already established and not repealed by this act.<sup>37</sup> This law followed the pattern of license legislation established by the License Law of 1858, but was much more inclusive, established higher fees for license, and higher penalties for its violation. Indirectly its contents affected many people in different parts of the country, as it was used as an example for high license legislation by many other states in forming their own liquor laws.<sup>38</sup>

Section one of the Slocumb Law gives the county board of each

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35. Ibid.

36. House Journal-1881, p. 856.

37. Ibid., pp. 856-7.

38. Savage and Bell, History of the City of Omaha, Nebraska, p. 176.



county the power to "grant license for the sale of malt, spirituous and vinous liquors, if deemed expedient, upon the application by petition of thirty of the resident freeholders of the town, if the county is under township organization, and if not under township organization, then thirty of the resident freeholders of the precinct where the sale of such liquors is proposed to take place, setting forth that the applicant is a man of respectable character and standing and a resident of the state."<sup>39</sup> An amusing sidelight on the number of freeholders required by this law on the petition took place during its debate in the legislature. When Church Howe suggested that section one be amended to read fifty freeholders instead of thirty, B. M. Broatch replied, "O, no; that would make it prohibition."<sup>40</sup>

Section two provided that no license could be issued until "at least two weeks' notice of the filing of the same [the application for license] has been given by the publication in a newspaper published in said county, having the largest circulation therein, or if no newspaper is published in said county, by posting written or printed notices of said application in five of the most public places in the town, precinct, village or city in which the business is to be conducted." Following this, if no written objections were filed with the county board, the license could be issued provided all other provisions of the law were fulfilled.<sup>41</sup>

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39. General Laws of Nebraska-1881, Chapter 61, p. 270.

40. Omaha Daily Republican, February 23, 1881, p. 5.

41. General Laws of Nebraska-1881, Chapter 61, p. 271.

Sections three and four dealt with the hearings held on objections to the granting of licenses. Section three provided that if any objection was filed, "the county board... [should] appoint a day for hearing of said case," and if the objection was substantiated, the application for the license would be refused.<sup>42</sup> The objection was automatically sustained if it was proven the applicant had violated any provisions of the Slocumb Law, or had had a former license revoked for any misdemeanor against the laws of the state.<sup>43</sup> Section four provided that any party making an objection had the power to compel the attendance of witnesses, who were to be paid by him at the rate provided by law for hearings in district court. Also, that if the license board decided that the objections were not valid and granted the license, the objector could then appeal to the district court where the judge could reverse or sustain the decision of the license board as he saw fit.<sup>44</sup>

Section five established the form of the license, made it non-transferable, and provided it could not be issued for a period exceeding one year. It also gave the board issuing the license the authority to revoke it "whenever the person licensed shall, upon due proof made, be convicted of a violation of any of the provisions of this act."<sup>45</sup>

Section six provided that "no person shall be licensed to sell malt, spirituous or vinous liquors, by any county board, or the authorities

42. Ibid.

43. Ibid.

44. Ibid., pp. 271-2.

45. Ibid., p. 272.

of any city or village, unless he shall first give bond in the penal sum of five thousand (\$5,000) dollars, payable to the State of Nebraska with at least two good and sufficient sureties, freeholders of the county in which the license is to be granted, to be approved by the board who may be authorized to issue the license, conditioned that he will not violate any of the provisions of this act, and that he will pay all damages, fines, penalties and forfeitures which may be adjudged against him under the provisions of this act." Also that "any bond taken pursuant to this section may be sued upon for the use of any person, or his legal representatives, who may be injured by reason of the selling or giving away any intoxicating liquor by the person so licensed, or by his agent or servant."<sup>46</sup> This provision was to discourage the establishment of cheap saloons with little or no capital, by an individual who, when being sued for damages caused by his activities, could leave the state. Since a five thousand dollar bond, or its equivalent in some cases, had to be posted in advance, this amount was available to pay at least part of the damages even though the saloon owner placed himself beyond the reach of the local authorities.

Section seven limited each person acting as surety for a saloon owner to one bond only.<sup>47</sup>

Section eight established a fine of twenty-five dollars for each offense of selling liquor "to any minor, apprentice, or servant, under twenty-one years of age."<sup>48</sup>

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46. Ibid., pp. 272-3.

47. Ibid., p. 273.

48. Ibid.

Section nine established a fine of not more than twenty dollars, thirty days in the county jail, or both, for any minor, apprentice, or servant who falsified his age for the purpose of obtaining liquor.<sup>49</sup>

Section ten forbade the sale of liquor to any Indian, insane person, idiot, or habitual drunkard, and set fifty dollars as the penalty for the violation of this regulation.<sup>50</sup>

Section eleven established a minimum fine of one hundred dollars and a maximum fine of five hundred dollars, and/or, imprisonment in the county jail not to exceed one month, for the sale of liquor without first obtaining a license under the provisions of this act. Also, even though the seller of liquor had no license, he was still responsible for any damage his activities caused with the same penalties as was a licensed person.<sup>51</sup>

Section twelve provided that when a complaint is presented to a magistrate concerning the violation of section eleven of this act, the magistrate, if he deemed the evidence sufficient, should bind the offender over to the next session of the district court.<sup>52</sup>

Section Thirteen provided a fine of one hundred dollars for each drink, sold or given away, which was adulterated with strychnine, strontia, sugar of lead, or any other substance.<sup>53</sup>

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49. Ibid., pp. 273-4.

50. Ibid., p. 274.

51. Ibid.

52. Ibid.

53. Ibid., pp. 274-5.

Section fourteen provided a one hundred dollar fine for each offense of selling or giving away liquor on the day of a special or general election, or on Sunday.<sup>54</sup>

Section fifteen provided that "the person so licensed shall pay all damages that the community or individuals may sustain in consequence of such traffic, he shall support all paupers, widows and orphans, and the expenses of all civil and criminal prosecutions growing out of, or justly attributed to, his traffic in intoxicating drinks."<sup>55</sup>

Section sixteen stated that "it shall be lawful for any married woman, or any other person at her request, to institute and maintain in her own name, a suit on any such bond [bond required in section six of this act] for all damages sustained by herself and children on account of such traffic, and the money when collected shall be paid over for the use of herself and children."<sup>56</sup>

Section seventeen gave the "proper authorities" the power to institute suits in behalf of any person becoming a county or city charge, by reason of intemperance, against the bond of any person licensed under this act who was in the habit of selling or giving liquor to the person becoming a public charge. Also, "that the person against whom a judgment may be rendered under the provisions hereof, may recover by a similar action a proportionate part of said judgment from any and all persons engaged in said traffic, who have sold or given

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54. Ibid., p. 275.

55. Ibid.

56. Ibid., pp. 275-6.

liquor to such a person becoming a public charge." <sup>57</sup>

Section eighteen provided that it was only necessary to prove that the saloon keeper sold the injured person, or his or her relative, liquor during the period in which the damages occurred, for the saloon keeper to be adjudged guilty. <sup>58</sup>

Section nineteen provided for suits before a justice of the peace when the damages claimed did not exceed the jurisdiction of the justice. Sections twenty through twenty-two were left out of this act in its final form, and section twenty-three came next. <sup>59</sup> It provided that all fines and penalties collected under this act were to be paid into the proper treasury for the use of the school fund. Also that the complaining witness, in suits under this act, was to be paid one-fourth of the amount collected as a fine or penalty in the suit. <sup>60</sup>

Section twenty-four stated that "the county board under the restrictions contained in section one (1) of this act, may grant permits to druggists to sell liquors for medicinal, mechanical and chemical purposes upon a compliance with all the provisions hereinbefore contained, and subject to all the requirements and penalties contained in this act, except that no license fee shall be required except the cost of issuing said permit." <sup>61</sup>

57. Ibid., p. 276.

58. Ibid.

59. Ibid., p. 276-7.

60. Ibid., p. 277.

61. Ibid.

Section twenty-five provided that "the corporate authorities of all cities and villages shall have the power to license, regulate and prohibit the selling or giving away of any intoxicating malt, spirituous and vinous, mixed or fermented liquors within the limits of such city or village." Also, "to determine the amount to be paid for such license, not less than five hundred (\$500) dollars in villages, and cities having not more than 10,000 population, nor less than one thousand (\$1,000) dollars in cities of the first class, and cities having over 10,000 population." The corporate authorities were also subject to all the provisions of this act in granting such licenses, and, in addition to licensing saloons, they could also license druggists. In wards or villages where there were less than sixty freeholders, the requirement of thirty freeholder's signatures on the application petition was waived, and only a majority of the freeholders were necessary.<sup>62</sup>

Section twenty-six provided that all druggists licensed under sections twenty-four and twenty-five of this act were required to keep a record of all liquor sold or given away by him showing "the dates, kind, quantity, for what purpose and to whom such liquor was sold or given away." This record was to be open to public inspection at all times, and on the first Monday in January and July, the druggist was to present to the clerk of the licensing authorities a record of all

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62. Ibid., pp. 277-8.

entries made since the last report. The penalty for failure to comply with the above regulations was a fine of from twenty to one hundred dollars, and imprisonment in the county jail for not less than ten nor more than thirty days.<sup>63</sup>

Section twenty-seven provided that any person misrepresenting the use to which the liquor was to be put in order to purchase it, was guilty of a misdemeanor and subject to a fine of ten dollars for the first offense, and twenty dollars and imprisonment in the county jail for not less than ten nor more than thirty days for the second offense.<sup>74</sup>

Section twenty-eight made it the duty of all peace officers to detain and present to a magistrate all persons found to be intoxicated. The fine for intoxication in this case was ten dollars and not more than thirty days in jail. It was also provided that all or part of this fine could be remitted by the magistrate if the defendant would state "when, where and of whom he purchased or received the liquor which produced the intoxication, and the name and character of the liquor obtained."<sup>65</sup>

Section twenty-nine provided that saloon keepers must "keep the windows and doors of their respective places of business unobstructed by screens, blinds, paint, or other articles." Penalties for the violation of this section were a fine of not less than twenty-five

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63. Ibid., pp. 277-8.

64. Ibid., p. 279.

65. Ibid., p. 279-80.



dollars, and/or, be imprisoned in the county jail for not less than ten days, plus the loss of license to sell liquor.<sup>66</sup>

Section thirty repealed all former acts pertaining to the subject of liquor licenses and made this act the only legislation in effect on the subject.<sup>67</sup>

This, then, was the Slocumb Law which was to govern the sale of liquor in the State of Nebraska throughout the period 1881 to 1917.<sup>68</sup> Sections 6, 11, 15, 16, 17, 18, 19, 26, and 29 illustrate the attempt of the State Legislature to placate the temperance enthusiasts by requiring druggists to keep records of their liquor sales, forbidding concealed bars, and making saloon keepers responsible for damages caused by their activities. Section 23 was of great help to the temperance organizations in bringing charges against illegal vendors of liquor as it provided that the person bringing the charge could collect one-fourth of the fine levied against the law violator plus any expenses incurred in the investigation. Through these concessions to the temperance people, the law was intended to remove the liquor question from the State Legislature for at least several years. But as A. E. Sheldon said, "With this session . . . the liquor question took a permanent place on the program of the Nebraska Legislature, never to be absent for forty years."<sup>69</sup>

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66. Ibid., p. 280.

67. Ibid.

68. Sheldon, Nebraska, pp. 911 and 913.

69. Ibid., p. 592.

## CHAPTER IV

### ENFORCEMENT OF THE SLOCUMB LAW

The Slocumb Law was the solution of the State Legislature to the problem of prohibition. It was one of those laws passed, in which the legislative body found a better solution than either of those proposed by the two opposing factions. Both sides recognized the need for a solution to the liquor problem and its attending evils, but neither could agree on what was to be done. The temperance advocates proposed the complete abolition of all liquor in the state, and were determined to compromise on nothing less than this.

"When prohibition makes a compromise with saloons, it always ends in victory for the saloons," was the dominate feeling of the prohibitionists.<sup>1</sup> The other extreme was held by the opponents of prohibition. They too agreed that there was a need for some legislation, but had little or no idea concerning it. The only thing they were sure of was that "prohibition does not prohibit," and therefore was not a solution.<sup>2</sup> These two factions did agree that the Slocumb Law was not the answer.

The prohibitionists declared through one of their spokesmen, Chancellor Fairfield of the University of Nebraska, that high license legislation had the effect of giving a legal status to vice, corruption,

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1. New Republic, April 4, 1885, p. 1.

2. Omaha Daily Herald, January 4, 1881, p. 2.

and murder.<sup>3</sup> The supporters of the liquor industry, on the other hand, stated that this high license law was another name for prohibition. The law raised the fee for a saloon license beyond the reach of the average business man and, it was argued, would completely destroy the "honorable business" of selling liquor in the state.<sup>4</sup> In spite of this opposition, the Slocumb Law had been passed by the legislature, signed by the governor, and was to go into effect on June 1, 1881.

In the three months between March 1, when the legislative session ended, and June 1, when the law was to go into effect, several courses of action were taken by the liquor dealers. A meeting of the business men in Omaha, who were affected by the Slocumb Law, was held in Brandts Hall on March 14, 1881. They resolved to form an organization called "The Merchants and Manufacturers Union of Nebraska" to combat, by legal means, "the disastrous effects of the law on the community."<sup>5</sup>

The course chosen by many of the smaller and more timid saloon owners was to close their doors and either go into another business or wait until enforcement of the law began and observe its results. All the saloons closed in Hastings, Fremont, Tekamah, Crete, and Plattsmouth.<sup>6</sup> In many other towns throughout the state, one or more saloons were closed. In Nebraska City, the number of saloons dropped from thirty-two before the Slocumb Law, to nine following the

3. Ibid., March 26, 1881, p. 5.

4. Ibid., March 15, 1881, p. 8.

5. Ibid.

6. Ibid., April 7, 1881, p. 5.

law.<sup>7</sup>

While the majority of the timid saloon owners of the state were closing their doors, either permanently or temporarily, many of their more courageous brethren were waiting for the law enforcement to begin. They placed their main hope in having the law declared unconstitutional by the courts, and in the meantime, they decided to obey it by taking out licenses.<sup>8</sup> There were also a few who, feeling that the law was just, tried to take out licenses, but could not.

Section twenty-five of the Slocumb Law provided that "the corporate authorities of all cities and villages shall have the power to license, regulate and prohibit the selling or giving away of any intoxicating, malt, spirituous and vinous, mixed or fermented liquors."<sup>9</sup> This placed the sole power of granting licenses, within the limits provided by the Slocumb Law, in the hands of the municipal authorities. If they chose to ignore the law and refrain from passing a license ordinance as many of them did, the law became nothing more than a scrap of paper within their jurisdiction. While the other provisions of the law could be enforced without any additional legislation on the part of local authorities, no licenses could be issued. A few weeks after the passage of the Slocumb Law, many saloons decided to continue their operations without being licensed, and in the towns of Fremont, North Platte, and others, they had no trouble.<sup>10</sup>

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7. Ibid., May 5, 1881, p. 4.

8. Ibid., June 1, 1881, p. 8.

9. General Laws of Nebraska-1881, Chapter 61, pp. 277-8.

10. Omaha Daily Herald, June 7, and 10, 1881, p. 5.

The Nebraska Supreme Court gave this position a firm legal foundation when it handed down its decision in the case of *The State v. Andrews*. Andrews petitioned the Supreme Court for a writ of mandamus to force the city council of Crete, Nebraska, one of the cities which had so far ignored the Slocumb Law, to grant him a liquor license. In his decision, Justice Lake stated that "It appears that the only ordinance on this subject in force in the city of Crete is one merely fixing the amount of money which the applicant for a license must pay into the city treasury therefor. There is none that licenses may be granted, nor as to what officer or officers shall receive, file, and give notice of the application, as required by sections 1 and 2 of the act; nor is there any provision as to who shall take and approve the bond of the applicant, and sign and issue the license, as required by sections 5 and 6. These, as well as several other important matters, can be regulated by only ordinances passed in due form, and until so regulated no application can be made and no other step taken by anyone within the city toward the procurement of such license. Writ denied."<sup>11</sup> This decision meant that the cities of the state who wished to, could take all the time they wished to pass a license ordinance without any fear of interference from anyone. And many of them did.

In the cities and towns of the state where there was enforcement of the law, some showed a marked change, while in others, there was

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11. Reports of Cases in the Supreme Court of Nebraska-1881,  
Volume XI, pp. 523-5.

almost no change at all. The minimum license fee of five hundred dollars was charged in most of the small towns, but some raised this considerably. In Seward, there were three applications for license at a fixed fee of one thousand dollars each.<sup>12</sup> Lincoln set its license fee at the minimum allowed by law for cities of the first class, and had nine saloons paying one thousand dollars each.<sup>13</sup>

A novel idea was originated in Sidney, where the law was not enforced. Ten of the thirteen saloon keepers operating illegally, paid one hundred and fifty dollars apiece into the school fund.<sup>14</sup> This was a cheap means of easing their consciences, since the school fund would have received a minimum of five hundred dollars from each had the city council decided to issue them licenses.

In North Platte where no ordinance had been passed, the liquor dealers stated their intention of watching the developments in Omaha, the center of the pro-liquor movement.<sup>15</sup> On June 7, seven days after the Slocumb Law went into effect, Mayor Boyd of Omaha asked the city council to pass a license ordinance so the saloons which were operating without licenses could be licensed and the school fund could receive needed revenue.<sup>16</sup> Growing impatient, due to the illegal activities of the saloons in Omaha that continued to operate without being licensed, General Estabrook joined with the ladies of the

12. Omaha Daily Herald, June 4, 1881, p. 5.

13. Ibid., April 18, 1882, p. 5.

14. Ibid., February 3, 1882, p. 5.

15. Ibid., June 7, 1881, p. 5.

16. Ibid., June 8, 1881, p. 8.

W. C. T. U. in presenting a petition to the grand jury requesting that they find out why the Slocumb Law was not operating in Omaha.<sup>17</sup> Never able to pass up an opportunity to strike a blow in behalf of the liquor industry or the Democratic Party, the Omaha Daily Herald commented that "if they would read the papers, they would know that preliminary legislation is necessary."<sup>18</sup> The Omaha Daily Republican stated in an editorial that the Omaha city council should pass a license ordinance whether it liked the Slocumb Law or not.<sup>19</sup> On October 4, 1881, almost four months after the mayor had requested it, the city council finally gave Omaha a license ordinance, to go into effect January 1, 1882.<sup>20</sup>

During the period following June 1, while the saloons in Omaha had been operating illegally, the event every liquor dealer in the State of Nebraska had eagerly awaited took place. C. L. Plenler of Omaha was arrested for the sale of liquor without a license and fined one hundred dollars by Judge Savage. Plenler immediately appealed the case to the Nebraska Supreme Court on the grounds that the Slocumb Law was unconstitutional. This was a test case receiving the support of The Merchants and Manufacturers Union of Omaha, and the defendant and his attorneys, E. J. Wakeley and J. S. Ambrose, set out to challenge the law on every possible point. They claimed that the license fee was a tax and as such, must be uniform

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17. Ibid., June 21, 1881, p. 8.

18. Ibid.

19. Omaha Daily Republican, August 7, 1881, p. 4.

20. Ibid., October 5, 1881, p. 8.

throughout the state, which it was not. Also that the law was unconstitutional because of the two mile limit, the power granted the courts to review decisions of the license boards, the rules of evidence laid down as a basis of proving guilt, and the power given to magistrates to remit portions of a penalty in return for a person giving evidence.<sup>21</sup> The main point presented by the attorneys for the law, Judge Estabrook and G. A. Corwin, was that the law was wholly within the police power of the state.<sup>22</sup> The Supreme Court decided that the Slocumb Law was constitutional in every particular. The license fee was not a tax, and the rest of the law was within the police power of the state.<sup>23</sup> As soon as they heard this decision, some liquor dealers closed their doors and began looking for a new business. While they were willing to pay the license fee, even though they considered it too high, they were not willing to be held responsible for all damages under the law.<sup>24</sup> Some of the more determined liquor dealers stated they were going to continue in business and hope for another hearing.<sup>25</sup>

On the morning of November 5, 1881, Colonel Watson B. Smith, clerk of the United States Court in Omaha, was found dead in the third floor hall of the post office with a bullet in his head. This fanned the already hot flames of the temperance controversy to an

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21. Ibid., August 12, 1881, p. 4.

22. Ibid.

23. Reports of Cases in the Supreme Court of Nebraska-1881, Volume XI, pp. 542-7.

24. Omaha Daily Herald, August 13, 1881, p. 8.

25. Ibid., August 20, p. 8.



even higher pitch. He had been an active member of the Good Templars, and a strong agitator for the enforcement of the Slocumb Law. Because of his temperance activities, he had received many threatening letters from people supposed to be working for the liquor industry of the city. The temperance organizations of the city immediately accused the liquor men of his murder. The Good Templars of Omaha passed the following resolution:

Resolved, that we, the members of the I.O.G.T. feel deeply the loss of our fellow citizen and worker in the temperance cause, Colonel Watson B. Smith, and we do hereby tender our sympathy to the friends and relatives of the deceased.

Resolved, that we use every endeavor to bring the assassin to justice.<sup>26</sup>

Rewards offered by the citizens of Omaha (\$5000), The Merchants and Manufacturers Union (\$500), the Good Templar Societies (\$200), and Governor Nance on behalf of the State of Nebraska (\$200), totaled \$5,900 for the apprehension of the murderer.<sup>27</sup> The reward was never collected, because in spite of attempts by the temperance organizations, the murder was never solved.

On the last day applications were accepted under Omaha's new license ordinance, forty-six saloons and ten druggists filed their applications. The licenses were for a three month period, as the municipal year ended April 9, and cost two hundred and fifty dollars.<sup>28</sup> There had been a controversy in Lincoln over whether or not druggists had

26. Omaha Daily Republican, November 6, 1881, p. 8.

27. The Omaha Daily Bee, November 6, 1881, p. 4.

28. Omaha Daily Herald, December 18, 1881, p. 8.

to post a five thousand dollar bond, but it was decided that they did not have to until so ordered by the courts.<sup>29</sup> This same solution was adopted temporarily in Omaha.

When the saloon licenses expired in April at the end of Omaha's municipal year, the applications for new licenses were for three months, six months, or one year. This caused another controversy, as the temperance people felt that, according to the law, the licenses in cities of the first class could not be issued for less than one thousand dollars in a lump sum. By paying in quarters or every six months, the saloon licenses cost one thousand dollars for the year, but were issued for sums ranging from two hundred and fifty dollars to five hundred dollars.<sup>30</sup> This argument reached its peak in 1884, when Mayor Chase was served with a restraining order prohibiting him from issuing licenses for less than one thousand dollars.<sup>31</sup> When the case came to trial, the court ruled that the injunction was revoked because it was illegal to prevent the defendant from issuing licenses. However, the existing ordinance in Omaha was declared void because the law clearly stated that each license issued must cost one thousand dollars in cities of the first class.<sup>32</sup>

This decision stopped the issuance of licenses in Omaha and a new ordinance was needed.<sup>32</sup>

This decision stopped the issuance of licenses in Omaha and a new ordinance was needed.<sup>33</sup> On May 6, 1884, the Omaha City

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29. Ibid., June 4, 1881, p. 5.

30. Ibid., March 23, 1881, p. 8.

31. Ibid., April 11, 1884, p. 8.

32. Ibid., April 24, 1884, p. 8.

33. Ibid., April 29, 1885, p. 8.

council passed a new ordinance providing that an applicant for license could pay two hundred and fifty dollars every three months if he applied at the beginning of the municipal year. If he waited until the beginning of the second quarter, he had to deposit five hundred dollars. If he waited until after the beginning of the second quarter, he had to deposit the full one thousand dollars.<sup>34</sup> This system was a form of a pay-as-you-go plan, which was passed by the council to conform with the law and at the same time give the liquor dealer the easiest terms possible. While the license was now issued for one year at a cost to the dealer of one thousand dollars, the full amount was paid over a period of nine months at two hundred and fifty dollars every three months. This ordinance completely revealed the full power of the liquor industry in Omaha.

On June 10, City Attorney Connell stated that the new license ordinance did not conform with the law as the courts had interpreted it, and suggested a new ordinance be passed providing for every license to be issued for one year with a lump sum payment of one thousand dollars.<sup>35</sup>

The licensees meanwhile, were taking advantage of the old method of issuing licenses. As of April 10, 1884, there were eighty-one applications for a license of three months, twenty-three applications for a license of six months, two applications for a

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34. Omaha Daily Republican, May 7, 1884, p. 4.

35. Omaha Daily Herald, June 11, 1884, p. 8.

license of two months, two applications for a license of one year, one application for a license of one month, and one man produced \$358.<sup>32</sup> and requested as much time as it would purchase.<sup>36</sup>

Perhaps even the city council saw the complexities of the situation. They introduced a new license ordinance providing for licenses, one year in length, at a cost of one thousand dollars to the applicant payable before the license could be issued.<sup>37</sup> This ordinance, No. 728, finally settled the liquor license question in Omaha, when it went into effect on January 15, 1885.<sup>38</sup>

Meanwhile, following the decision of the Supreme Court in the case of *Plenler v. The State*, the enforcement of the Slocumb Law was almost complete throughout the state. Most of the lagging cities and towns recognized the futility of delaying any longer, and began to pass license ordinances and enforce them. During the period between the time the Slocumb Law was passed and June 1, 1881, when it went into effect, most of the saloons of the state refrained from purchasing a license because they were afraid they would have to purchase another at the end of May.<sup>39</sup> After June 1, however, the situation was different, and most of the former saloon operators took out licenses. In many of the small towns of the state where there were only a few saloons and the license fee was set at the minimum of five hundred

36. Ibid., May 16, 1884, p. 8.

37. Omaha Daily Republican, June 18, 1881, p. 4.

38. Ibid., July 16, 1884, p. 4.

39. Omaha Daily Herald, May 4, 1881, p. 5.

dollars, there was very little controversy on the law. It affected no change whatever in Papillion,<sup>40</sup> and it was not even a "topic of conversation" in Nebraska City where the license fee was only five hundred dollars.<sup>41</sup>

In Fremont, one of the towns slow to pass a license ordinance, a grand jury of temperance men began to indict persons selling liquor illegally.<sup>42</sup> This gave the twelve liquor dealers in the city the needed push, and they began to comply with the law "in spite of their strong feelings against it."<sup>43</sup>

In North Platte, the last wet town in the state to pass a license ordinance, the town council finally conformed early in 1883, and the ordinance went into effect on May 1, 1883.<sup>44</sup>

Contrary to popular predictions, the destruction of a majority of the saloons of the state did not result from the Slocumb Law. While the number of saloons did decrease immediately following the passage of the law by the State Legislature, their ranks were soon replenished by outsiders coming into the state to operate one or more saloons, and also by former operators who returned to the business when the dire predictions on the law did not become a reality.

There were, however, two major changes as a result of the enforcement of the Slocumb Law throughout the state. The first was the

40. Ibid., June 7, 1881, p. 5.

41. Ibid., September 8, 1881, p. 5.

42. Ibid., October 11, 1881, p. 5.

43. Ibid., November 2, 1881, p. 5.

44. Ibid., April 24, 1881, p. 5.

increased revenue derived from the sale of liquor licenses for the school funds in all parts of the state. In Wahoo, for example, the school fund received \$2,500 from the sale of five licenses,<sup>45</sup> while Lincoln received \$9,000 from nine licenses,<sup>46</sup> and Tecumseh received \$2,700 for three licenses;<sup>47</sup> Fremont received \$8,000 more under the new law from its eighteen saloons than it had under the old law,<sup>48</sup> and Grand Island received \$8,000 from sixteen saloons and five drug stores.<sup>49</sup> The biggest fee, however, was received in Washington County, which charged \$1,500 for each license, or \$500 more than the largest cities in the state charged.<sup>50</sup> All this revenue had an excellent effect on the educational atmosphere of the children of the state. After 1882, the first complete year in which the Slocumb Law was in operation, not a year passed without reports of new school buildings being planned, built, or opened. It was as though every city, town, and county in the state had been planning new schools for years, and now had the funds to carry out their plans.

The second change caused by the Slocumb Law, was the increased number of law suits filed under its provisions. Section six provided for a bond of five thousand dollars to be posted by the licensee, and gave injured persons the right to sue for all or part of this bond in

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45. Ibid., June 10, 1881, p. 5.

46. Ibid., April 18, 1882, p. 5.

47. Ibid., April 26, 1882, p. 5.

48. Ibid., June 7, 1884, p. 5.

49. Ibid., May 10, 1884, p. 4.

50. Ibid., March 15, 1884, p. 4.

payment for damages suffered by them.<sup>51</sup> Section fifteen provided that the licensee was responsible for all damages arising from his activities, and section eighteen gave the plaintiff an easier means of proving guilt than before.<sup>52</sup> These provisions made suits easier and therefore more plentiful. It also attached an unintended limitation on the amount of the suits. Since the bond was five thousand dollars, and because it was available if the suit was won, the usual amount sued for was five thousand dollars if the suit was against one saloon owner, ten thousand dollars if the suit was against two saloon owners, and so forth. In 1881, Julia Honnel sued John Knoell in Fremont for five thousand dollars for damages suffered, caused by Knoell's sales to her husband making him a habitual drunkard and causing him to spend two thousand dollars in two years for liquor.<sup>53</sup> In 1882, two saloon owners in Fremont were sued for five thousand dollars each by a family who alleged the loss of a father and mother due to a runaway horse accident caused by excessive drink.<sup>54</sup> These two suits were typical of the many instituted against saloon owners during the period. As is usually the case, in almost all law suits, the damages awarded did not equal the amount sued for. These law suits had the partial effect of making the saloon owners more careful whom they served and how much they sold each individual. Even before saloons

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51. General Laws of Nebraska-1881, Chapter 61, pp. 272-3.

52. Ibid., p. 275-276.

53. Omaha Daily Herald, May 18, 1881, p. 5.

54. Ibid., February 22, 1884, p. 4.

were licensed in North Platte under the Slocumb Law, a marked change was noticed. The usual number of "bums" who inhabited the saloons of the town could no longer purchase or beg anything to drink as the saloon owners did not "wish to take the responsibility."<sup>55</sup>

The final factors necessary to make the enforcement of the Slocumb Law complete were the temperance organizations. Overcoming their strong aversion to any sort of license legislation, they soon began to investigate both the saloons and the lax law enforcement officials. They were soon to become better enforcement agencies than the most zealous of the law enforcement officials.

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55. Ibid., June 7, 1881, p. 5.



## CHAPTER V

### TEMPERANCE ORGANIZATIONS AND POLITICAL PARTIES

The forces which kept the struggle for prohibition alive during this period of adversity, were the temperance organizations of the state. There was no state-wide political organization during the years 1880 to 1883, as the Prohibition Party had disbanded after its defeat in the Election of 1874,<sup>1</sup> and did not nominate a candidate for any state office until the Election of 1884.<sup>2</sup> During the whole period from 1880 to 1890, the various temperance organizations of the state continued to work toward their goal of complete prohibition, and kept the temperance movement alive.

The first temperance organization in the State of Nebraska, was the Independent Order of Good Templars, commonly referred to as the Good Templars or the I.O.G.T. This organization, founded in Nebraska in the 1860's, was a fraternal organization with the promotion of temperance as its chief objective. In the words of the Grand Worthy Chief Templar, as recorded in the Journal of Proceedings of the Second Annual Session of the Grand Lodge of Nebraska, Independent Order of Good Templars, 1868, its purpose was:

To promote temperance in every possible way but  
it will not ally itself with a political party, but the

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1. Sheldon, Nebraska, Volume I, p. 484.

2. The Omaha Daily Bee, September 5, 1884, p. 4.

members will use individual influence in placing in positions of trust and honor, men in whose sobriety and rectitude of purpose they have entire confidence; men who they feel they can trust to use the power conferred upon them in advancing the holy cause of temperance.<sup>3</sup>

They held meetings regularly throughout the period, and kept a close watch on the liquor license situation. The members of the I.O.G.T. were usually prominent men of the state such as Colonel Watson B. Smith<sup>4</sup> and their main activity was sponsoring lecturers. A temperance lecture bureau was established in Lincoln by T. B. Dawson, treasurer of the state organization of the Good Templars, to send lecturers to all parts of Nebraska and the surrounding states.<sup>5</sup>

The I.O.G.T. was usually content to take a less fanatical approach to the question of prohibition than were the W.C.T.U. and the Red Ribbon Clubs of the state. Usually working quietly behind the scenes, there were only two instances on record when they entered upon the scene without their usual calm attitude. The first time was when the Good Templars of Valparaiso, Nebraska, offered five dollars for the name and photograph of each legislator who voted against the prohibition amendment in the sixteenth session of the State Legislature.<sup>6</sup> The second instance occurred when one of their most prominent

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3. Watson, "The Evolution of the Temperance Movement in Nebraska," p. 3.
  4. See Chapter Four, p. 43.
  5. Omaha Daily Herald, April 25, 1882, p. 5.
  6. Ibid., February 24, 1881, p. 4.

members, Colonel Watson B. Smith, was murdered.<sup>7</sup> At other times, they were content to sign the petitions which the W.C.T.U. and the Reform Clubs circulated so vigorously, and continue to quietly sponsor their lecturers.

The second temperance organizations founded in Nebraska, and the best known of all, was the Nebraska branch of the Women's Christian Temperance Union. This organization was a direct outgrowth of a national movement called the "Modern Crusade" which started a branch in Lincoln in February of 1874, and attempted to "pray the saloons out of business."<sup>8</sup> This organization's only other activity was to gather signatures on temperance pledges.<sup>9</sup> In 1875, the "Modern Crusade" was replaced by the W.C.T.U.<sup>10</sup> The W.C.T.U. was the most active supporter of prohibition among the various temperance organizations. Its major weakness was that its membership was composed of women, and they did not have the right to vote.

This organization also sponsored lecturers throughout the state, and brought in some famous names from other parts of the country. Frances E. Willard, national president of the W.C.T.U. spoke in Omaha in August of 1883, stating that high license was a failure, and woman suffrage meant death to the liquor industry.<sup>11</sup> She re-

7. See Chapter Four, p. 43.

8. Watson, "Temperance Movement in Nebraska," p. 5.

9. Ibid., p. 6.

10. Ibid., p. 14.

11. The Omaha Daily Bee, August 17, 1883, p. 4.

turned to the state again in 1886 to speak in behalf of temperance.<sup>12</sup>

In October of 1882, the W.C.T.U. brought Bishop Thorold of Rochester, England, to Omaha. He spoke at Trinity Cathedral, and suggested that the State Legislature pass a law "to limit" the sale of liquor. In this way, prohibition would come about gradually.<sup>13</sup> The W.C.T.U. also sponsored the many speaking trips of Governor St. John of the dry state of Kansas. He usually spoke on the "success of prohibition in Kansas."<sup>14</sup>

Following the example of the Good Templars, the W.C.T.U. also kept a close watch on saloons and the enforcement of liquor laws throughout the state. When Omaha delayed in passing a license ordinance under the Slocumb Law, the W.C.T.U. asked the grand jury to investigate.<sup>15</sup> Each local organization throughout the state assumed the responsibility of watching the saloons in its area to see that they operated within the law. There were few wet towns in the state which escaped their strict supervision, and the newspapers of the period are full of reports of their goading lax law enforcement officials into action against someone illegally selling liquor.

In Fremont, one of the most notorious of the lax law enforcement towns of the state, it was necessary to have a grand jury of temperance men begin to indict saloon keepers under the Slocumb Law before they

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12. Omaha Daily Herald, October 15, 1886, p. 5.

13. Ibid., October 6, 1882, p. 8.

14. Ibid., December 17, 1881, p. 5.

15. Ibid., June 21, 1881, p. 8.

began to obey it.<sup>16</sup> When the licenses of the saloons in Fremont expired in 1884, the W.C.T.U. petitioned the city council not to reissue licenses to those saloon owners who had been convicted of violations of the Slocumb Law. The city council disregarded their protests and reissued the licenses without any investigation.<sup>17</sup>

Another part of the program of the W.C.T.U. was the teaching of the effects of alcoholic beverages in the schools. They never ceased their agitation to accomplish this throughout the period. In January of 1885, Mrs. E. M. J. Cooley from the Valparaiso branch of the W.C.T.U. spoke before the legislature on the necessity of making this a legal requirement in all the schools in the state. While she was allowed to address the legislature, nothing was accomplished, as the legislators took a thirty minute recess during her speech.<sup>18</sup>

In addition to holding meetings and conventions, sponsoring lecturers, attempting to promote enforcement of all liquor legislation, and petitioning state and local governments on behalf of prohibition, the W.C.T.U. also worked with the persons affected by the liquor traffic. They raised money to be given to persons who wished to prosecute liquor dealers for damages sustained by them due to sales to their relatives or themselves.<sup>19</sup> They also established reading rooms, gave free medicine and water to intoxicated persons, and

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16. Omaha Daily Herald, October 11, 1881, p. 5.

17. Ibid., May 6, 1884, p. 4.

18. Ibid., January 25, 1885, p. 2.

19. Ibid., February 7, 1882, p. 5.

set up a lunch room in Omaha to serve inexpensive lunches.<sup>20</sup> This was to lure any persons who drank away from the saloons.

Besides the Good Templars and the W.C.T.U., there were local reform clubs organized throughout the state. These clubs were composed of any citizens in the locality who were interested in supporting the temperance cause. They worked mainly on the local level, and left state wide activities to the W.C.T.U. and the Good Templars. They were usually called Red Ribbon, Blue Ribbon, or just Reform Clubs.

The main activity of these reform clubs was to support candidates, who were in favor of prohibition, for offices on the town councils of their particular areas.<sup>21</sup> They also watched for illegal selling of liquor, and, if the W.C.T.U. had not already done so, called for its prosecution.<sup>22</sup> Little was heard from most of these reform clubs, except at election time, as they usually gathered only for social events during the rest of the year.

In 1885, a new organization was started in Omaha, which, in its expansion throughout the state, was of great help to the temperance cause. This was the Law and Order League. While it was not a temperance organization in the true sense of the word, as it did not agitate for prohibition, it was set up to enforce the license laws of the state.<sup>23</sup> In commenting on the League, Edward Rosewater stated that

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20. Ibid., July 23, 1885, p. 8.

21. Ibid., September 23, 1885, p. 2.

22. Ibid., November 27, 1883, p. 5.

23. Ibid., November 17, 1885, p. 5.

"in enforcing [the] license law, discretion must be used between orderly and disorderly houses."<sup>24</sup> Other towns soon took up the idea of organizing Law and Order Leagues, and there were soon many of them all over the state. These leagues soon found that they had a great deal of free time, so they began to see that all laws in their communities were enforced. In Sidney, Nebraska, the Law and Order League went so far as to have several men arrested for cruelty to animals.<sup>25</sup> One of the most embarrassing moments for the league in Lincoln came when it was discovered that one of the detectives it had employed to search for law violators, was wanted by the law in another state for embezzlement.<sup>26</sup>

These were the organizations of the period which were the chief supporters of prohibition and enforcement of the liquor laws. With the help of law enforcement officials and in some cases the saloon owners themselves, the task of enforcing the Slocumb Law was accomplished. In one case, it was reported that the drug stores in Lincoln were doing as good a business with their twenty-five dollar licenses, as were the saloons with their one thousand dollar licenses. The saloons hired detectives to check on the drug stores, and the Omaha Daily Herald commented that if "the druggists would check on the saloons, there would soon be little need for Red Ribbon Clubs and Good Templars."<sup>27</sup>

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24. The Omaha Daily Bee, December 2, 1885, p. 4.

25. Omaha Daily Herald, January 13, 1886, p. 5.

26. Ibid., June 2, 1887, p. 1.

27. Ibid., November 27, 1883, p. 5.

Not all the organizing during this period was done by the prohibition forces. There were several organizations formed by the anti-prohibition faction. They were not as extensive nor as well organized as the prohibition groups, and usually did not last long.

The first organization was called The Merchants and Manufacturers Union of Nebraska,<sup>28</sup> and was formed in Omaha in 1881, to take all legal steps to prevent the disastrous effects of the Slocumb Law upon the community.<sup>29</sup> When the small group of temperance advocates who lived in Omaha began to agitate for stricter regulation of the saloons in the city,<sup>30</sup> the Merchants and Manufacturers Union decided to meet with them to see if the two sides could not compromise on a solution. On August 29, 1881, all the saloons in Omaha remained closed in protest of the mayor's Sunday closing regulation which provided that all saloons must close between 12 p.m Saturday night and 4 a.m. Monday morning. All the milkmen, icemen, and grocers of the city were also closed.<sup>31</sup> The Merchants and Manufacturers Union was immediately accused of causing this as a means of forcing the mayor and the temperance groups to rescind the closing order, but the Merchants and Manufacturers Union denied that they had any part in it.<sup>32</sup> All businesses resumed work as usual the next day. On September 1, the temperance people met with the Merchants and

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28. See Chapter Four, p. 38.

29. Omaha Daily Herald, March 15, 1881, p. 8.

30. Ibid., August 23, 1881, p. 8.

31. The Omaha Daily Bee, August 29, 1881, p. 4.

32. Omaha Daily Herald, August 30, 1881, p. 8.



Manufacturers Union, but neither side would give in on any part of their demands.<sup>33</sup> No agreement was reached and in the next year, the Merchants and Manufacturers Union passed out of existence.

On September 11, 1882, there was an anti-prohibition convention held in Omaha, presided over by J.A.Creighton. There were several anti-prohibition speakers, one of whom was Reverend Burnett, of Iowa. He compared Iowa to "Bleeding Kansas," and said that prohibition had hurt that state very much. The Committee on Resolutions, which was appointed by the convention, wrote a report stating that certain disaffected people were trying to influence the officials of the state to "barter away the inalienable rights of the people." The committee also stated that they supported legislation to govern the liquor traffic but were strongly opposed to prohibition. A letter was read from J. Sterling Morton stating that the United States Supreme Court had decided that prohibition was unconstitutional.<sup>34</sup>

This convention also adopted a platform for the forthcoming election stating that "a concerted action on the part of certain restless, disaffected citizens of Nebraska, who, following the lead of unreasonable fanatics in other states, are seeking to overturn the well established usages of society." Also, it was stated "that in season and out of season and at all times, we will, without regard to party or to party

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33. Ibid., September 2, 1881, p. 8.

34. The Omaha Daily Bee, September 12, 1882, p. 4.

lines, oppose any and every measure that leads to prohibition."<sup>35</sup>

After adopting their platform and without nominating any candidates, the members of this convention returned to their respective businesses never to meet in the same body again.

The newspapers of the period also played a strong part in the prohibition controversy. Two prohibition advocates, Frank J. Sibley and A. G. Wolfenbarger, published a paper called the New Republic in Lincoln. It was devoted almost exclusively to prohibition news. One of their favorite arguments for prohibition was a graph which appeared in six consecutive issues of the weekly newspaper in 1886. Under the title "How our money is spent," it read as follows:

Public Education .....	\$ 85,000,000
Boots and Shoes .....	\$196,000,000
Cotton Goods .....	\$210,000,000
Iron and Steel .....	\$290,000,000
Meat.....	\$303,000,000
Bread .....	\$505,000,000
Tobacco.....	\$600,000,000
Liquor.....	\$900,000,000 <sup>36</sup>

Also in answer to the question. "Who will vote for license?" The New Republic answered "Liquor dealers, gamblers, bummers, thieves, murderers, and other criminals. Also a few misguided temperance men who love the 'old party' better than God and humanity."<sup>37</sup>

While the anti-prohibition side had no regular newspaper, many of the local papers of the period editorialized against prohibition. The Omaha Daily Herald took particular pleasure in making fun of the

35. Nebraska Party Platforms, 1858-1940, p. 95.

36. New Republic, January 16, 1886, p. 2.

37. Ibid., February 6, 1886, p. 1.

prohibitionists. Several of their comments were: "Love of whiskey ruins men; the love of dress ruins women; but whoever wanted women prohibited by law from wearing clothes?"<sup>38</sup> Under "Good Item for Temperance Workers," they stated that there were "137 moderate drinkers, 55 hard drinkers and 48 temperate in [the] state prison."<sup>39</sup> They also printed a short poem called "Epitaph on a Temperance Man."

A noted Temperance man lies here,  
The green turf o'er his head;  
No man e'er saw him on his bier,  
Till after he was dead.<sup>40</sup>

This same paper in commenting on a forthcoming temperance lecture by Governor St. John of Kansas stated that "Cold water St. John will be in Lincoln January 28, if he is not frozen."<sup>41</sup> The Omaha Daily Herald and other papers, especially those who supported the Democratic Party, never missed a chance to write serious editorials against prohibition.

The Republican Party was the dominate party of the period in the state, with the Democratic Party following close behind. The third parties in the state, of which there were several, were never able to draw any considerable number of votes. In the Election of 1880, there were three parties in the field, Republican, Democrat, and Greenback Labor. All of them refrained from taking a stand on prohibition.<sup>42</sup>

38. Omaha Daily Herald, February 5, 1881, p. 4.

39. Ibid., May 31, 1882, p. 5.

40. Ibid., August 29, 1885, p. 4.

41. Ibid., January 20, 1886, p. 3.

42. Nebraska Party Platforms, pp. 79-84.

There was no state prohibition party in 1880, but the national Prohibition Party drew 1,599 votes for president out of a total vote of 89,071.<sup>43</sup> In 1881, in the off-year election for supreme court justice, the Democrats advocated the "amendment or unconditional repeal" of the Slocumb Law which had just been passed.<sup>44</sup> The Republicans, the only other party entering a candidate, refrained from taking a stand on prohibition.<sup>45</sup>

In the Election of 1882, the field was filled with parties and platforms. The Democratic Party modified its stand of the previous year and stated that the state had the right to regulate the sale of liquor, but prohibition was "contrary to the fundamental rights of the individual," and if it was passed it would be "neutralized by the constitution of the United States."<sup>46</sup> The National Greenback Party condemned the state legislature for not letting the people vote on the prohibition issue.<sup>47</sup> The Anti-Monopoly Party took no stand, while the Anti-Prohibition Platform lived up to its name.<sup>48</sup> The Prohibitory Constitutional Amendment Platform began;

Whereas, A convention representing the interests of manufacturers and retailers of intoxicating liquors, met in the city of Omaha on the 11th day of the present month, fortified with letters of sympathy from two respectable citizens and encouraged by the speech of a reputed clergyman, and

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43. World Almanac, 1951, p. 753.

44. Nebraska Party Platforms, p. 85.

45. Ibid., pp. 86-7.

46. Ibid., pp. 88-9.

47. Ibid., pp. 89-90.

48. Ibid., pp. 90-5.

Whereas, the convention presented itself as the champion of 'civil and religious liberty,' upon which the traffic has trampled for ages: and Whereas, They declared 'That in season and out of season, and at all times they would without regard to party lines, oppose any and every measure that leads to prohibition....'<sup>49</sup>

The rest of the platform called for the submission of a constitutional amendment to the people. The Women's Suffrage Platform and the platforms of the Republican and State Farmers' Alliance Parties made no mention of the subject.<sup>50</sup> The next year, the Democratic platform remained the same as in 1882, and the Women's Suffrage and Republican platforms again refrained from mentioning the subject.<sup>51</sup>

In 1884, the first state Prohibition Party in ten years entered the field. Its platform stated that its members supported the national Prohibition Party, that liquor traffic was an evil, demanded the submission of a constitutional amendment to the people, praised the work of the W.C.T.U., supported woman suffrage, held that the public domain should be held for actual settlers, that state educational lands should be leased instead of sold, and called for all "good citizens" to unite with them regardless of party" to push the work of reform to "speedy success."<sup>52</sup> The Peoples' Party platform of Lancaster County stated that the prohibition issue should be determined by the whole state.<sup>53</sup> The Anti-Monopoly, Greenback, and Republican Parties again took no stand.<sup>54</sup> The Demo-

49. Ibid., p. 96.

50. Ibid., pp. 96-99

51. Ibid., pp. 100-3.

52. Ibid., pp. 111-2.

53. Ibid., pp. 110-1.

54. Ibid., pp. 108-10 and 112-4.

crats kept the same paragraph they had used since' 1882.<sup>55</sup> When the Election of 1884 was over, G. Miller, the Prohibition candidate for governor had received 2,075 votes; J. W. Dawes, the Republican, 72,835; and J. S. Morton, the Democrat, 57,634.<sup>56</sup> St. John, the national Prohibition Party candidate for president received 2,899 votes.<sup>57</sup>

In the campaign of 1885, both the Democrat and Republican Parties avoided the subject.<sup>58</sup> The Prohibition Party formulated a new platform stating that "In pursuance of this object, and recognizing the fact that the dominate parties of the country are either unwilling or unable to commit themselves to the political policy of supressing this evil, we hereby invoke the aid of all temperance people to unite with the Prohibition Party in the destruction of the monster iniquity." They denounced high license legislation, stating that the license fee was the "price paid for permission to commit crimes." And finally, they supported woman suffrage.<sup>59</sup> When the outcome of the election had been determined, O. B. Hewitt, Prohibition Party candidate for supreme court justice, had 4,445 votes to 72,004 for the Republicans, and 49,489 for the Democrats.<sup>60</sup>

In 1886, the Farmers' Alliance platform took no stand on the question, the Democrats came out in opposition to prohibition, the

55. Ibid., pp. 107-8.

56. Nebraska Blue Book for 1899 and 1900, p. 175.

57. World Almanac, 1951, p. 753.

58. Nebraska Party Platforms, pp. 115-7 and 118-9.

59. Ibid., pp. 117-8.

60. Nebraska Blue Book, p. 181.

National Union platform favored prohibition, and the Republicans chose to let the people decide. They stated that they were in favor of submitting a prohibition amendment to the people.<sup>61</sup> The Prohibition Party drew up a platform that had twenty-one sections, and included their opinions on all the current issues of the day. They were in favor of prohibition, repealing the statute which permits foreigners to vote in state and municipal elections, making all appointive offices elective, abolition of the fee system for compensating officers, arbitration of labor disputes, equal and just transportation rates, a more careful and just system of taxes, and woman suffrage. They were opposed to liquor license laws, convict labor, and compromising on any issue with any other party.<sup>62</sup> In this election, the Prohibition Party did slightly better than it had previously. It received 8,175 votes to 75,956 votes for the Republicans, and 52,656 votes for the Democrats.<sup>63</sup>

In the Election of 1887, the platforms of the Republican and Democratic Parties took no stand, while the Prohibition Party compressed their all-inclusive platform of the last election and used it.<sup>64</sup> When the final results were counted, the Prohibition Party had lost almost 1,000 votes and had 7,359 to 86,725 for the Republicans, and 56,548 for the Democrats.<sup>65</sup>

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61. Nebraska Party Platforms, pp. 121-3 and 125-7.

62. Ibid., pp. 123-5.

63. Nebraska Blue Book, p. 183.

64. Nebraska Party Platforms, pp. 129-32.

65. Nebraska Blue Book, p. 189.

The Election of 1888 turned out to be the most important election of the period. By this time, the Democrats had completely reversed the stand they had taken in 1881, and now supported high license against prohibition.<sup>66</sup> The Prohibition Party drew up two platforms, as they could not agree among themselves as to whether or not they should promote only prohibition or take a stand on all issues. They finally decided to draw up one which mentioned only prohibition, and another which entered all the popular or unpopular issues of the day.<sup>67</sup> The Republicans, having allowed the bill submitting a prohibition amendment to the people to be voted down in the House of Representatives in the legislative session of 1887,<sup>68</sup> again adopted "submission" as a plank in their platform.<sup>69</sup> When the balloting was over, the Republicans had won again, having 104,282 votes to 83,820 for the Democrats, and 9,715 for the Prohibition candidate for governor.<sup>70</sup> The Prohibition candidate for president received only 9,429 votes.<sup>71</sup>

These were the policies which led up to the important legislative session of 1889, in which the temperance advocates were to get a chance to prove their strength. While the Prohibition Party could not put through the temperance program, due to its small support among the voting population of the state, the Republicans, by attempt-

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66. Nebraska Party Platforms, pp. 134-5.

67. Ibid., pp. 136-7.

68. See Chapter Six, p. 73.

69. Nebraska Party Platforms, pp. 138-9.

70. Nebraska Blue Book, p. 191.

71. World Almanac, 1951, p. 753.



ing to settle the issue, gave the temperance advocates their chance for success.

## CHAPTER VI

### THE STATE LEGISLATURE AND THE SUPREME COURT

It was recognized by the temperance organizations that the State Legislature was the place to concentrate if they were to accomplish their goal of state-wide prohibition. With the sixteenth session, "the liquor question took a permanent place on the program of the Nebraska Legislature, never to be absent for forty years."<sup>1</sup> In this session of the State Legislature, a prohibition amendment was introduced in the House of Representatives, where it was rejected by a vote of twenty-three to forty-nine. Later in the session, however, the Slocumb High License Law was passed.<sup>2</sup> Since the sixteenth through twenty-first sessions of the State Legislature were dominated by the members of the Republican Party, they must be given credit or blamed for all the legislation passed between the years 1880 and 1890.

In 1883, the State Legislature was composed of fifty-one Republicans, twenty-nine Democrats, sixteen members of the Anti-Monopoly Party, and three independents in the House, and fifteen Republicans, eleven Democrats, six members of the Anti-Monopoly Party, and one member of the Greenback Party in the Senate.<sup>3</sup> There were two bills to amend sections of the Slocumb Law and one bill to provide for the submission

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1. Sheldon, Nebraska, p. 592.

2. See Chapter Three, p. 26.

3. General Laws of Nebraska-1883, pp. 10-14.

of a prohibition amendment to the people introduced in the House of Representatives. House Bill No. 70 provided for the submission of a prohibition amendment to the voters of the state. On February 9, D. M. Nettleton from Clay County, chairman of the Committee on Constitutional Amendments, reported the bill unfavorably. Thomas J. Whitzel from Geneva in Fillmore County, presented the minority report of the Committee recommending the passage of the amendment. J. N. Cook from Fairbury in Jefferson County, moved that the minority report be adopted, but this motion lost, twenty-eight to sixty-eight.<sup>4</sup> Bill No. 136 proposed the amendment of sections 1, 16, 18, 25, and the repeal of section 7 of the Slocumb Law. This bill was reported unfavorably by the Judiciary Committee on February 16, which meant that the bill was dropped from the House rolls.<sup>5</sup> Bill No. 272 proposed the amendment of section 11 of the Slocumb Law. This bill was recommended favorably by the Judiciary Committee on February 16, but was dropped when the Senate passed and sent to the House a bill similarly amending the same section.<sup>6</sup>

In the Senate there were two bills introduced. Bill No. 60 contained the same provisions as House Bill No. 136 and the passage of this bill was postponed indefinitely on February 16, 1883.<sup>7</sup> Bill No. 135 provided for the amendment of section 11 of the Slocumb Law.

4. House Journal-1883, p. 577.

5. Ibid., p. 504.

6. Ibid., p. 847.

7. Senate Journal-1883, p. 583.

It was passed by the Senate on February 19, by a vote of twenty-two to six, and sent to the House.<sup>8</sup> It was returned from the House with its approval, and was signed by the governor on February 27, 1883.<sup>9</sup>

This act read as follows:

Be it enacted by the Legislature of the State of Nebraska:

Section 1. That section 11 of chapter 50 of the Compiled Statutes of 1881, entitled 'Liquors,' be amended to read as follows:

Section 11. All persons who shall sell or give away on any pretext, malt, spirituous, or vinous liquors, or any intoxicating drinks, without first having complied with the provisions of this act and obtained a license as herein set forth, shall for each offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, or be imprisoned not to exceed one month in the county jail, and shall be liable in all respects to the public and to individuals the same as he would have been had he given bonds and obtained license as here provided; Provided, That any person or persons shall be allowed to sell wine made from grapes grown or raised by said person or persons on land belonging to or occupied by said person or persons in the State of Nebraska, the same to be sold in quantities not less than one gallon, without procuring the license provided for in this chapter.

Section 2. That said section 11 is hereby repealed.

Approved February 27th, A.D. 1883.<sup>10</sup>

When the legislature met in 1885, the temperance organizations of the state, ignoring their defeat in the House of Representatives in 1883, once more began to agitate for the passage of a submission bill. They presented the House of Representatives with thirty petitions

8. Ibid., p. 670.

9. Ibid., pp. 906 and 934.

10. General Laws of Nebraska-1883, pp. 237-8.

containing a total of 10,443 signatures from forty-eight counties in the state. The petitions ranged in size from 1183 signatures on one from Gage County, to one containing six signatures from Madison County.<sup>11</sup> The composition of the House of Representatives in 1885 was seventy-eight Republicans, nineteen Democrats, one who listed himself as a Democrat in the Anti-Monopoly Party, and one Independent. The Senate membership was composed of twenty-four Republicans and eight Democrats.<sup>12</sup> Although the members of the House introduced eight bills on the liquor question, and there were two more introduced in the Senate, none of them was enacted into law.

Of the eight bills introduced in the House, six of these--Bills No. 57, 142, 204, 279, 345, and 362, were to amend parts of the Slocumb Law. Five of this number were either reported unfavorably by the Committee, or were postponed so long there was no time to pass them before the session ended.<sup>13</sup> Bill No. 142, providing for the amendment of section one of the Slocumb Law, was identical with Bill No. 47 in the Senate. It was passed by the House on March 2, 1885, by a vote of seventy-four to eleven, and sent to the Senate.<sup>14</sup> The bill was amended and returned to the House on March 5, but the committee to which the bill was referred, refused to approve the

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11. House Journal-1885, pp. 542-7, 560-1, 622, 674, and 732.

12. General Laws of Nebraska-1885, pp. 10-14.

13. House Journal-1885, pp. 386, 599, 771, 846, and 593.

14. Ibid., p. 1274.

amendments, and thereby killed the bill.<sup>15</sup> The other two bills in the House, Numbers 93 and 285, provided for the submission of a prohibition amendment as did Bill No. 57 in the Senate. Of these three bills, only No. 93 in the House came to a vote, the others being left in committee. When Bill No. 93 was voted on in the House, the vote was forty-eight to forty-six, or fourteen less than a constitutional majority.<sup>16</sup>

In the next session of the legislature which met in 1887, the House was composed of seventy-one Republicans, twenty-eight Democrats, and one Independent. The Senate had twenty-four Republicans and eight Democrats.<sup>17</sup> The Republicans therefore had the majorities necessary to put into effect the plank in their platform of 1886 calling for the submission of a prohibition amendment to the voters of the state.<sup>18</sup> Bill No. 21 in the House and No. 50 in the Senate were introduced to accomplish this. Senate Bill No. 50 was allowed to die in committee,<sup>19</sup> but Bill No. 21 was brought to a vote in the House, and defeated by a vote of forty-nine to forty-four with seven not voting and a two-thirds majority being necessary to pass it. The opposition was composed of twenty-three Democrats and twenty-one Republicans.<sup>20</sup> The prohibitionists in the state now had to wait two more years for their big chance.

15. Ibid., p. 1554.

16. Ibid., p. 1071.

17. General Laws of Nebraska-1887, pp. 10-14.

18. See Chapter Five, p. 66.

19. Senate Journal-1887, p. 301.

20. House Journal-1887, p. 1140.

Although five other bills were introduced in the House,<sup>21</sup> and a like number in the Senate,<sup>22</sup> all dealing with amendments to the Slocumb Law, none of the bills in the House reached a vote,<sup>23</sup> and only one of the bills in the Senate was passed.<sup>24</sup> This one, Bill No. 28, to amend sections 2, 3, and 4 of the Slocumb Law, was passed by the Senate but rejected by the House.<sup>25</sup>

In 1889, the Republicans again had a majority in both houses with seventy-nine to twenty Democrats and one number of the Union Labor Party in the House, and twenty-seven to six Democrats in the Senate.<sup>26</sup> This gave them a second chance to pass a prohibition amendment which they had adopted for the second time in their platform.<sup>27</sup> This time the Republicans in the State Legislature seemed to have a more determined attitude.

Bill No. 1 in the House called for the submission of a prohibition amendment to the people. This bill was indefinitely postponed in favor of Senate Bill No. 31.<sup>28</sup> Senate Bill No. 31 was passed by the Senate January 26, 1889, and was sent to the House.<sup>29</sup> When the House returned the bill with its approval, the Democratic members of the Senate began proposing amendments to cause the defeat of the bill

21. Bills No. 32, 189, 394, 489, 490, and 496.

22. Bills No. 24, 28, 43, 80, and 281.

23. House Journal-1887, pp. 479, 676, 1078, 1118, and 1458.

24. Senate Journal-1887, pp. 301, 376, 491, 644, 1100, and 1211.

25. Ibid., p. 1266.

26. General Laws of Nebraska-1889, pp. 10-14.

27. See Chapter Five, p. 67.

28. House Journal-1889, p. 1989.

29. Senate Journal-1889, p. 372.

or at least its postponement. All the amendments were voted down, and the bill passed by a vote of twenty-four to nine, on February 13, 1889. It provided:

Be it enacted by the Legislature of the State of Nebraska:

Section 1. That at the general election to be held on the Tuesday succeeding the first Monday of November, A.D. 1890, there shall be submitted to the electors of this state for approval or rejection an amendment to the constitution of this state in words as follows:

'The manufacture, sale, and keeping for sale of intoxicating liquors as a beverage are forever prohibited in this state, and the legislature shall provide by law for the enforcement of this provision.' And there shall also at said election be separately submitted to the electors of this state for their approval or rejection an amendment to the constitution of the state in words as follows:

'The manufacture, sale, and keeping for sale of intoxicating liquors as a beverage shall be licensed and regulated by law.'

Section 2. At such election, on the ballot of each voter voting for the proposed amendments to the constitution, shall be written or printed the words: 'For proposed amendment to the constitution prohibiting the manufacture, sale, and keeping for sale of intoxicating liquors as a beverage,' or 'Against said proposed amendment to the constitution prohibiting the manufacture, sale, and keeping for sale of intoxicating liquors as a beverage.'

There shall also be written or printed on the ballot of each elector voting for the proposed amendment to the constitution, the words: 'For proposed amendment to the constitution that the manufacture, sale and keeping for sale of intoxicating liquors as a beverage in this state, shall be licensed and regulated by law,' or 'Against said proposed amendment to the constitution that the manufacture, sale and keeping for sale of intoxicating liquors as a beverage shall be licensed and regulated by law.'

Section 3, If either of the said proposed amendments shall be approved by a majority of the electors voting at the said election, then it shall constitute section twenty-seven of article one of the constitution of this state. This bill having remained with the governor



five days, Sunday excepted, the legislature being in session, the governor having failed to return this bill to the legislature during its session, and having failed to file it in my office with his objections within five days after adjournment of the legislature, it has hereby become a law.

Witness my hand this 13th day of February A.D. 1889.

G. L. Laws, (signed)  
Secretary of State<sup>30</sup>

The fact that this resolution called for a vote on both the high license and prohibition amendments at the same election, could, in the opinion of some members of the House of Representatives, cause a great deal of confusion. There was also the opinion of a few members of the House, that this method of voting was illegal. They therefore asked the Nebraska Supreme Court to pass on the constitutionality of the resolution.<sup>31</sup> The decision handed down by the court stated that the resolution was legal in every respect.<sup>32</sup>

The temperance organizations of the state were now to have a chance to prove their claims that they could put into effect a prohibition amendment if the State Legislature would give the people of the state a chance to vote on it.

In addition to the submission bill, there were seven bills introduced in the House, and two bills in the Senate, to amend sections of the Slocumb Law.<sup>33</sup> The only one of these bills which passed

30. General Laws of Nebraska-1889, pp. 629-31.

31. Omaha Daily Herald, February 17, 1889, p. 2.

32. Ibid., February 28, 1889, p. 3.

33. Bills No. 5, 123, 124, 215, 226, 361, 446, and in the Senate, 98 and 133.

both the House and the Senate was House Bill No. 123.<sup>34</sup> It amended section twenty-five of the Slocumb Law. Carrying the emergency clause to put it into effect immediately, it took the privilege of granting licenses away from the city councils in cities over 25,000 population. In metropolitan cities, or cities over 80,000 population, the power to grant licenses was vested in the board of fire and police commissioners. In cities of the first class, or cities having between 25,000 and 80,000 population, the power of granting licenses was vested in the excise board.<sup>35</sup> There was no reason given for this change in the authorities empowered to grant liquor licenses, but presumably it was done to give the same authorities who were responsible for the enforcement of the license regulations the power to issue them.

While the Slocumb Law had been amended twice since its passage in 1881, both had been minor amendments and did not change the effect or meaning of the law. It was still the liquor law of the State of Nebraska, and regulated all liquor sold in the state. In addition to amending the Slocumb Law, each session of the State Legislature from 1880 to 1890 had recorded the introduction of a bill to submit a prohibition amendment to the people. Most of the amendments had died in committee, but of the two which were brought to the floor of the legislature, the first one failed in 1887, but the second one in 1889 finally passed.

Second only to the State Legislature in importance in the liquor

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34. House Journal-1889, p. 2106.

35. General Laws of Nebraska-1889, pp. 354-7.

controversy in Nebraska, was the Supreme Court. The liquor industry of the state was opposed to any regulation levied upon it, and therefore tested all liquor legislation, whenever possible, before the Supreme Court. Most of the cases brought before the court between 1880 and 1890 were decided against the interests of the liquor industry, but like the temperance people of the state, they never stopped trying.

In 1881, there were three cases appealed to the Supreme Court. In the case of *The State v. Daniel Lydick*, the court decided that liquor licenses were valid only for the person to whom they were issued, and that licenses issued contrary to statute were invalid.<sup>36</sup> The other two cases decided by the court were of more importance.

In the case of *The State v. Andrews*, Andrews had petitioned the state for a writ of mandamus to force the city of Crete to issue him a saloon license. The decision of the court read as follows:

It appears that the only ordinance on this subject in force in the city of Crete is one merely fixing the amount of money which the applicant for a license must pay into the city treasury therefor. There is none that licenses may be granted, nor as to what officer or officers shall receive, file, and give notice of the application, as required by sections 1 and 2 of the act; nor is there any provision as to who shall take and approve the bond of the applicant, and sign and issue the license, as required by sections 5 and 6. These, as well as several other important matters, can be regulated only

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36. Reports of Cases in the Supreme Court of Nebraska-1881, Volume XI, p. 366.

by ordinances passed in due form, and until so regulated no application can be made and no other step taken by anyone within the city toward the procurement of such license. Writ denied.<sup>37</sup>

This decision had a great effect on the saloons of the state, as cities and towns which did not wish to enforce the Slocumb Law could merely refrain from passing a license ordinance.<sup>38</sup>

The third case brought before the Supreme Court in 1881, was the case of *Plenler v. The State*. This was the case almost every saloon dealer in the state had been waiting for, as it was to test the constitutionality of the Slocumb Law.<sup>39</sup> *Plenler* was an Omaha saloon owner who was arrested for selling liquor without a license. *Plenler's* attorneys claimed almost every section of the Slocumb Law was unconstitutional. The court ruled against *Plenler* stating that the license fee was not a tax, and that the rest of the law was wholly within the police power of the state.<sup>40</sup>

In 1882, the court handed down a decision in the case of *The State v. Cass County*, stating that the courts could not order a license board of county commissioners to take action on a license application through a writ of mandamus.<sup>41</sup> In 1883, in the case of *Ex Parte Wolf*, the court stated that the various city councils of the state had the power to regulate saloon hours.<sup>42</sup>

37. *Ibid.*, p. 525.

38. See Chapter Four, p. 39.

39. See Chapter Four, p. 41.

40. Reports of Cases in the Supreme Court of Nebraska-1881, Volume XI, p. 547.

41. *Ibid.*, Volume XII, p. 54.

42. *Ibid.*, Volume XIV, p. 24.

In 1885, the court passed on one of the more important questions of the period. The School District of Omaha claimed that the Slocumb Law applied to wholesale as well as retail liquor dealers.<sup>43</sup> The state, acting on behalf of the School District of Omaha, prosecuted a wholesale liquor dealer named Cummings for selling liquor without a license. In the case of *The State v. Cummings*, the court stated:

The ordinance of the city of Omaha makes it the duty of the city Marshall, on the first day of each and every month, to ascertain and report to the city council the names of all persons or firms engaged in the liquor traffic in said city, giving their place of business, whether licensed or unlicensed, and to notify any unlicensed liquor dealers to at once cease the traffic, and to make complaint against all persons selling liquor without license. Held, That the ordinance applies to all persons engaged in the liquor traffic, and it is the duty of the marshall to comply with the requirements of the ordinance without reference to the quantity of liquor sold at each sale by the person engaged in the traffic.

The act entitled 'An act to regulate the sale of malt, spirituous, and vinous liquors,' etc., approved February 28, 1881, Compiled Statutes, chapter 50, commonly known as the 'Slocumb' law, applies alike to all persons who are engaged in the sale of malt, spirituous, and vinous liquors. Wholesale dealers are not exempt from its provisions.<sup>44</sup>

This decision gave the schools of the state an additional source of revenue. The court also affirmed in the case of *The State v. Wilcox*, that according to section 5, Article VIII of the constitution of the State of Nebraska, all license fees belonged to the school fund.<sup>45</sup>

43. Omaha Daily Herald, January 25, 1885, p. 8.

44. Reports of Cases in the Supreme Court of Nebraska, Volume XVII, p. 311.

45. Ibid., p. 219.

The year 1886 was a very busy one for the Supreme Court. Six cases involving liquor were presented to it for decisions. In the case of McClay v. Worrell, Nancy Worrell sued McClay for support due her because of the loss of her son, David S. Worrell. She stated that McClay sold her son and Mark Hall liquor making them drunk, and in this condition, Hall killed her son with a billard cue. McClay stated that the suit was illegal even though such suits were provided for in the Slocumb Law, thus again testing its constitutionality. The court decided that "a poor person dependent for support upon a relative, according to the provisions of chapter 67, Compiled Statutes, may, in his own name and for his own benefit, maintain an action against a vendor of intoxicating drinks for the loss of such support."<sup>46</sup>

In the case of Matte v. McGucklin, the constitutionality of the Slocumb Law was tested on the section requiring the licensee to be a resident of the state. The Supreme Court ruled in favor of the law, stating that the legislature may require a licensee to be a resident of the state if it is deemed proper.<sup>47</sup>

The case of Roberts v. Taylor was a case appealed to the court on the ground that excessive damages were granted by the lower court. The Supreme Court lowered the damages from \$5,000 to \$700 for making Thomas Roberts a habitual drunkard, and at the same time

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46. Ibid., Volume XVIII, p. 44.

47. Ibid., p. 323.

stated that a person who sold or gave away liquor was responsible for damages.<sup>48</sup> In the case of *The State v. Bennett*, the Supreme Court ruled on the legality of the occupation tax.<sup>49</sup> The court decided that cities of the second class could impose an occupation tax in addition to the license fee.<sup>50</sup>

In the case of *The State v. Weber*, the court ruled that "the presentation of a petition signed by not less than thirty resident freeholders... [was] an indispensable condition precedent to the issuance of such license."<sup>51</sup> In *Plainview, Nebraska*, A. P. Steinkraus presented a petition to the license board requesting a license to sell liquor. D. H. Hurlbert objected, saying that the license should not be granted as Steinkraus had been guilty of violating the Slocumb Law. Without holding a hearing, the board refused to issue the license. When the case of *Steinkraus v. Hurlbert* reached the Supreme Court, the court ruled that:

Where a remonstrance against the issuance of license to an applicant is filed, ... it is the duty of such board to set a day and hear testimony to prove or disprove the charge, and render a decision thereon. If the licensing board refuse to receive testimony in support of the remonstrance, the district court will remand the cause in order that such testimony may be taken and a decision rendered thereon.<sup>52</sup>

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48. *Ibid.*, Volume XIX, p. 180.

49. See Chapter Seven, p. 91.

50. Reports of Cases in the Supreme Court of Nebraska, Volume XIX, p. 191.

51. *Ibid.*, Volume XX, p. 467.

52. *Ibid.*, p. 519.

In 1887, in the last case brought before it during the period 1880 to 1890, the Supreme Court ruled that the authorities have no right to grant a license until the applicant has published notice in accordance with the regulations of the Slocumb Law (*Pelton v. Drummond*).<sup>53</sup>

In 1889, the State Legislature passed Senate Bill No. 31 providing for the submission to the voters of the state, in the election to be held in November of 1890, both a prohibition amendment and a high license amendment. The House of Representatives asked the Supreme Court for a ruling on the legality of submitting both these amendments at the same time. The House wanted four questions answered by the Supreme Court:

First--Is senate file 31 constitutional, notwithstanding its dual form and the fact that it submits two separate and distinct amendments?

Second--Can a voter under our system of government, legally cast his vote for two distinct and absolutely contradictory propositions at the same time? That is, can he vote in favor of or against both of the amendments at the same election?

Third--If both the prohibitory and license amendments secure a majority of the total vote cast at the election in November, 1890, will the effect be to defeat both measures?

Fourth--Does the amendment and changing by the house of the title to the original senate bill come under the decision found in 17, Nebraska 394, and does such an amendment prove fatal to only a part or all of the measure?<sup>54</sup>

The opinion of the Supreme Court written by Justice Maxwell read as follows:

53. *Ibid.*, Volume XXI, p. 492.

54. Omaha Daily Herald, February 21, 1889, p. 3.



In re senate file No. 31.

First--Section 1, article 15 of the constitution of Nebraska does not prescribe the form in which propositions by the legislature to amend the constitution shall be made, whether by bill or joint resolutions, therefore, if an amendment is proposed by a bill duly passed by the requisite three-fifths majority of the members elected to each house and entered upon the journals thereof, and afterwards presented to the governor for his approval, who retains the same for more than five days, Sundays excepted, the court will not for such cases declare the propositions in conflict with the constitution and void.

Second--The proposed amendments possess no efficacy until approved by a majority of the electors of the state voting at the election, and the approval of the governor is unnecessary and adds nothing to the validity of such proposed amendments.

Third--The proposition to prohibit 'the manufacture, sale and keeping for sale of intoxicating liquors, as a beverage,' and 'regulate by law, the manufacture, sale and keeping for sale of intoxicating liquors as a beverage' are independent, and to be separately submitted to the electors of the state for approval or rejection. Any elector may vote for either, or against either, or both such propositions.

Fourth--The proposed amendments offer divers modes of controlling the traffic in intoxicating drinks, in other words, a choice of remedies for an acknowledged evil. From the nature of the case, but one of the proposed amendments could be carried into effect, therefore, votes cast in favor of both propositions nullify each other.

Fifth--A title stating the object of a bill, or provision to amend the constitution is unnecessary, and if added, might be disregarded, such title being necessary only in cases of ordinary legislation.

Sixth--A proposition to amend the constitution was passed by the senate by the necessary three-fifths majority and entered at length on the journal. The proposition was then amended by the house, and as amended was passed by that body by the requisite majority and entered at length on the house journal. Afterward the house amendments were concurred

in by the requisite majority of the senate, and such amendments entered at length on the senate journal. Held, that there was a sufficient compliance with section 1, article 15 of the constitution.<sup>55</sup>

This decision removed the last obstacle standing in the way of the amendment, and the people of Nebraska were at last to be given a chance to decide for themselves the question of prohibition.

Thus in 1881, immediately following the passage of the Slocumb Law, the Supreme Court began to rule on its constitutionality. By the end of the year 1887, the court had ruled on almost every section of the law, and in every case had ruled in favor of the state. In addition to this, the court cleared the way, with its ruling on Senate Bill No. 31, for the voters of the state to express themselves on the subject of prohibition.

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55. Reports of Cases in the Supreme Court of Nebraska, Volume XXV, p. 864.

## CHAPTER VII

### THE PROGRESS OF LOCAL OPTION\*

While there was no state wide prohibition in Nebraska between 1880 and 1890, there were many towns in the state that had local prohibition. In almost all of the smaller towns and cities of the state, the supporters of prohibition would nominate a slate of candidates for the town council. In some cases, the Republican and Democratic nominees for the town council would forget their rivalry and combine forces to defeat the prohibition nominees. In cases where they did not, the task was at times easier for the prohibitionists. They could slip into office while the Democrats and Republicans were so busy fighting each other, they had no time to campaign against prohibition.

There was no regular local option law passed to give each area the privilege of voting on prohibition, but section twenty-five of the Slocum Law gave the corporate authorities of all cities and villages of the state the power to "license, regulate and prohibit the selling or giving away of any intoxicating malt, spirituous and vinous, mixed or fermented liquors within the limits of such city or village."<sup>1</sup>

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1. General Laws of Nebraska-1881, pp. 277-8.

\* Local option normally means the right to prohibit liquor within each county of the state. In this chapter, the meaning is altered slightly to depict the choice of the people within the cities and villages of Nebraska.

This gave the supporters of prohibition the opportunity to nominate and elect, if they could muster the necessary votes, officials pledged to institute prohibition as one of their first acts upon taking office.

This section of the Slocumb Law had one omission in it. It had neglected to give the rural areas of the state the right to regulate and prohibit the sale of liquor through the ballot box. This omission had the effect of sometimes nullifying a prohibition vote in a town as the residents of the town could go to a saloon operating in the country under no regulations whatever. This was the situation in Omaha.

Between Omaha and South Omaha there was a seventy-five acre tract of land which was subject to the jurisdiction of neither city. In 1888, a saloon opened there, and the legal opinion on the matter was that neither city had the power to force the saloon owner to purchase a license.<sup>2</sup> Due to another defect in the Slocumb Law, the county board could not license any saloon within two miles of a city or incorporated village.<sup>3</sup> Originally passed as a protection to the city by preventing saloons licensed at a lower fee by the county from competing with those in the city, it was now working a worse injustice than it had been designed to prevent. This saloon then was responsible to no governing authority, and had no license fee to pay, or bond to post. The owner could sell liquor to whomever he wished, with almost no fear of action being taken against him.

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2. Omaha Daily Herald, March 13, 1888, p. 7.

3. General Laws of Nebraska-1881, p. 271.

Since the cost of the license fee was passed on to the consumer by the liquor dealer, an unlicensed saloon owner within the two mile limit outside a city, could sell his liquor at a lower price than could the licensed dealer in the city.<sup>4</sup> In Schuyler, Nebraska, when the license fee was raised from five hundred to one thousand dollars, the Omaha Daily Herald stated that "the bottom of beermugs have gone up in consequence."<sup>5</sup>

Another source of trouble for the saloons of the state, were the drug stores. Section twenty-four of the Slocumb Law gave the license boards of the state the power to grant licenses to drug stores. The drug stores so licensed, could sell liquor for "medicinal, mechanical, and chemical purposes," with no license fee required except the "cost of issuing said permit."<sup>6</sup> This "cost of issuing" the license was usually set at twenty-five dollars. Besides meaning competition for the saloons in the license areas, this regulation also meant in effect that there were no completely "dry" areas in the state.

From Crete, a reporter for the Omaha Daily Herald stated that although there had been no saloons in Crete for almost a month, he had seen "twice as many drunken men on the street" as before.<sup>7</sup> In Albion, it was reported that a saloon keeper had discovered the difference between a drug store and a saloon. He "changed his sign,

4. Omaha Daily Herald, October 30, 1883, p. 8.

5. Ibid., May 4, 1888, p. 4.

6. General Laws of Nebraska-1881, p. 277.

7. Omaha Daily Herald, May 24, 1881, p. 5.

bought ten dollars worth of patent medicine, and saved one thousand dollars license fee."<sup>8</sup> In Lincoln, it was finally decided to enforce Sunday closing regulations against drug stores as well as saloons, as they were selling "large amounts of liquor" on Sunday when the saloons were forced to close.<sup>9</sup> In Omaha, Mayor Broatch ordered the druggists to stop selling liquor to customers by drams, that is, one drink at a time.<sup>10</sup>

The saloons of the state also found another source of difficulty in the pressure tactics used by the temperance organizations. In Bennett, Nebraska, the temperance people boycotted all firms who did business with any of the saloons in Bennett. They felt that if no one would sell or rent land to the saloons, they could not exist in Bennett.<sup>11</sup> In Orleans, Nebraska, the Methodists forced the town council to refrain from granting liquor licenses, by threatening to move their college in Orleans, which was the main feature of the town, elsewhere.<sup>12</sup>

In Omaha, a veteran saloon keeper informed an Omaha Daily Herald reporter how he used to avoid high license and prohibition laws in Washington, D. C. and Maryland. In Washington, he used to boil water under the front windows of his saloon to keep them steamy and thus prevent police and temperance workers from looking in. In the

8. Ibid., February 24, 1885, p. 4.

9. Ibid., April 19, 1887, p. 2.

10. Ibid., March 21, 1889, p. 5.

11. Ibid., March 30, 1886, p. 5.

12. Ibid., May 1, 1886, p. 7.

"dry" state of Maryland, he hung up a dozen pictures on the walls and charged 25¢ admission to his "art gallery." When a customer was through "viewing the art," he was given a glass of whiskey. Both these methods, he stated, were very effective and recommended them to anyone who could use them.<sup>13</sup>

Under section 5, Article VIII of the constitution of the State of Nebraska, all money derived from the sale of licenses was to go into the school fund.<sup>14</sup> In at least one case, this provided a convenient excuse to be used by some saloon owners to stay in business. Three saloon owners in Niobrara offered to go out of business if the prohibition faction of the town would donate \$1,500, the total amount of their license fees, to the school fund.<sup>15</sup> In Omaha, in the midst of an ordinance fight,<sup>16</sup> the president of the Board of Education decided that the Slocumb Law included wholesale liquor dealers under its license terms. The board decided it could put to good use the revenue derived from this additional source, so it decided to press the issue. Judge McCulloch decided, when a test case was brought before him, that wholesale liquor dealers were included under the terms of the Slocumb Law, and must purchase licenses.<sup>17</sup> The case was then

13. Ibid., September 13, 1885, p. 6.

14. The State v. Wilcox, Nebraska Supreme Court, 1885.

15. Omaha Daily Herald, October 22, 1886, p. 2.

16. See Chapter Four, pp. 45-47.

17. Omaha Daily Herald, January 25, 1885, p. 8.

appealed to the Supreme Court, which affirmed Judge McCullock's ruling.<sup>18</sup>

While the saloon owners of the state were being attacked by the prohibitionists, the drug stores, and in Omaha even the Board of Education, a new source of trouble was in the making. This was the "occupation tax." Originated by several of the license boards in the state, it was a means of gaining funds for the town and county treasuries. Under the state constitution, all license fees and fines went to the school fund. With the passage of an occupation tax, the license fee would still go to the school fund, but the price the saloon owner paid was increased and the difference was the occupation tax which went directly to the license authority. It was first passed in Washington County where the license fee was one thousand dollars. The occupation tax was five hundred dollars, making a total price of \$1,500 for every license issued in the county.<sup>19</sup>

Other towns throughout the state soon copied this means of raising additional revenue. Wayne had a \$700 license fee, and an occupation tax of \$500.<sup>20</sup> Lincoln, with a license fee of \$1,000, instituted an occupation tax of \$500 on both saloon and drug store licenses, making a total of \$1,500 for saloons and \$530 for drug stores.<sup>21</sup> Most of the towns of the state followed the example of

18. *The State v. Cummings*, Nebraska Supreme Court, 1885.

19. *Omaha Daily Herald*, March 15, 1884, p. 4.

20. *Ibid.*, June 2, 1886, p. 7.

21. *Ibid.*, April 27, 1887, p. 2.



their predecessors when they passed a law requiring payment of an occupation tax, and made the amount of the tax \$500. Schuyler had a tax of \$300<sup>22</sup> and the most notable exception to this rule was Beatrice, with an occupation tax of \$25.<sup>23</sup>

Even when the saloons of the state were beset with all these problems, their troubles were not yet over. The biggest problem of all was the temperance organizations. In many towns throughout the state, the prohibitionists took the position that no matter how much the saloons paid into school funds and local treasuries, the amount did not equal the trouble and grief they caused.<sup>24</sup> The temperance organizations began to take advantage of the town elections held in April every year. They either nominated their own candidates, or supported those candidates of other parties who had pledged opposition to the granting of saloon licenses if they were elected.

In the local elections in April of 1881, prohibition was an issue in only five towns in the state. In Central City, the prohibition ticket won by a vote of almost two to one, prohibition won in Ashland by a majority of ten, Blair and Brownsville both elected license tickets,<sup>25</sup> and in Tecumseh prohibition was defeated by a majority of seventy-nine.<sup>26</sup>

22. Ibid., January 25, 1888, p. 4.

23. Ibid., May 2, 1888, p. 4.

24. Ibid., April 25, 1882, p. 5.

25. Ibid., April 9, 1881, p. 5.

26. Ibid., April 14, 1881, p. 5.

In 1882 and 1883, there were no changes in the liquor situation of the small towns in Nebraska reported, although there were undoubtedly a few elections where prohibition was an issue.

In 1884, the high license ticket remained in office in Schuyler,<sup>27</sup> but Seward was carried into the ranks of the prohibition movement by a majority of twenty-seven.<sup>28</sup> This was the last election in which only a few towns voted on the issue, as the prohibition element of the state was growing rapidly in strength. From this time on, most of the towns with a temperance organization had at least one election, in which prohibition was an issue, and, since the temperance supporters did not give up easily, usually more than one election.

In 1885, Albion, Alma, Ashland, Beatrice, Bennett, Bloomington, Blue Springs, Cedar Rapids, Columbus, Cortland, Crete, Davenport, David City, Dawson, DeWitt, Dorchester, Edgar, Exeter, Fairbury, Falls City, Friend, Geneva, Grafton, Hampton, Hardy, Hastings, Holdrege, Indianola, Juniata, Liberty, Louisville, Madison, McCook, Minden, Nebraska City, Norfolk, North Bend, North Loup, Orleans, Osceola, Oxford, Pawnee City, Red Cloud, Rulo, Salem, Seward, Stella, Sterling, Stromsburg, Superior, Syracuse, Talmage, Tecumseh, Unadilla, Utica, Waco, and Wahoo all defeated the prohibition ticket and elected the high license ticket. Aurora, Brock, Central City,

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27. Ibid., April 8, 1884, p. 5.

28. Ibid., April 13, 1884, p. 4.

Chester, Fairfield, Fairmont, Franklin, Genoa, Gibbon, Greenwood, Hebron, Hubbell, Neligh, Riverton, St. Edwards, Table Rock, and Valparaiso all elected the prohibition ticket.<sup>29</sup> Out of seventy-four towns in the State of Nebraska, that were asked to vote on prohibition, fifty-seven rejected it and seventeen accepted it.

In 1886, Ashland, Aurora, Columbus, Exeter, Falls City, Fremont, Harvard, Juniata, Kenesaw, Milford, Minden, Papillion, Sutton, Syracuse, and Wilber, accepted prohibition.<sup>30</sup> Only in Aurora, had prohibition been held over from the year before. All fourteen others had had saloons in 1885. Beatrice, Bennett, Central City, Cortland, Fairbury, Hastings, McCook, Orleans, Red Cloud, and Wakefield all elected the license ticket.<sup>31</sup> Central City had elected the prohibition ticket in 1885, and after a one year trial had voted it out of office.

In 1887, prohibition was adopted in Central City, Creighton, and Oakland.<sup>32</sup> Central City evidences an almost even balance of power between the wet and dry factions. It had adopted prohibition in 1885, rejected it in 1886, and adopted it again in 1887. Bloomington, Crete, Fairbury, Juniata, Milford, and Republican City all rejected prohibition.<sup>33</sup> Out of these six towns, Bloomington, Crete, and Fairbury had given prohibition a two year trial, and Juniata and Milford had tried it for one year before rejecting it.

29. New Republic, April 11 and 18, 1885, pp. 1 and 4.

30. Omaha Daily Herald, April 7 and 8, 1886, p. 1.

31. Ibid., April 7, 1886, p. 1.

32. Ibid., April 6, 1887, p. 1.

33. Ibid.

In 1888, Franklin, Liberty, and Republican City voted the prohibition ticket into office.<sup>34</sup> Of these three towns, Franklin had rejected prohibition in 1885, Liberty had adopted it in 1885, dropped it in 1886, and now adopted it again, and Republican City gave a vote of confidence to the prohibition ticket they had elected in 1887.

Atkinson, Cortland, Gibbon, Gothenburg, Leigh, Madison, Plum Creek, Stromsburg, and West Point elected the license ticket.<sup>35</sup> Of these nine towns, Cortland had adopted prohibition in 1885, rejected it in 1886, and now reaffirmed the rejection. Madison and Stromsburg, after three years of prohibition rejected it.

In 1889, prohibition won in Aurora, Bennett, Oakland, Ulysses, Unadilla, and Utica.<sup>36</sup> Ainsworth, Avoca, Brainard, Creighton, David City, DeWitt, Edgar, Germantown, Grant, Harvard, Juniata, Minden, North Bend, Oakdale, Orleans, Osceola, Seward, Staplehurst, Stockham, St. Paul, and Tekamah voted the license ticket into office.<sup>37</sup> In 1889, Milford probably won for itself the title of the most fickle town in the state. Every year after 1884, Milford had changed from prohibition to license and back again. The year 1889 proved to be no exception, and Milford again reversed its choice of the preceding year and changed from prohibition to high license.<sup>38</sup>

In 1890, there was no prohibition issue in most of the towns of

34. New Republic, April 12, 1888, p. 2.

35. Ibid.

36. Omaha Daily Herald, April 3, 1889, p. 1.

37. Ibid.

38. Ibid.

the state, as the temperance organizations had at last been given an opportunity to vote into effect, their life goal, state prohibition.<sup>39</sup>

These then were the problems which were to plague the saloon owner as long as he stayed in business. Local Option, the chief problem of the saloon owner, made advances and received reverses throughout the period 1880 and 1890, but as an issue was never permitted to die by the persistent temperance supporters. In most of these annual elections the majority of the towns asked to vote on prohibition usually voted it down. For this reason, after the temperance organizations had made their introductory gains, most of which occurred before the year 1886, they had a hard struggle to maintain these gains. Almost every time they added a new town to this list of dry towns, they lost one of their former conquests.

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39. See Chapter Six, pp. 75-76.

CHAPTER VIII  
THE ELECTION OF 1890

Following the passage of Senate Bill No. 31 by the twenty-first session of the State Legislature in 1889, the prohibitionists began to plan their strategy in preparation for the election in November of 1890. On April 17, 1889, the prohibitionists from all the counties in Nebraska met in Omaha to begin planning for the forthcoming campaign.<sup>1</sup> During this convention, the delegates could not decide whether a third party was necessary, or, whether they should campaign as a non-partisan temperance league.<sup>2</sup> Since no solution could be reached, they decided to drop the controversy for a while and passed a resolution calling for temperance organizations to use their influence to put the prohibition amendment into effect.<sup>3</sup>

Two months later, Republicans, Democrats, and Prohibitionists met in Omaha to form "The Nebraska Non-Partisan Prohibition Amendment League." The sole purpose of this league was to secure the passage of the prohibition amendment.<sup>4</sup> Composed mainly of "Anti-saloon Republicans," the temperance supporters felt that a non-partisan organization with prohibition as the only platform would draw

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1. Omaha Daily Herald, April 18, 1889, p. 3.

2. Ibid., April 19, 1889, p. 3.

3. Ibid.

4. Ibid., June 6, 1889, p. 3.

temperance votes regardless of the party affiliation of the voter.<sup>5</sup>

In the Election of 1889, the Prohibition Party drew up one of its all inclusive platforms favoring the principles of the national Prohibition Party, support for the pending prohibition amendment, no compromises with the other political parties, women suffrage, the Australian ballot, the dissolution of trusts and monopolies, government "control" of the railroads and telegraphs, and commended the W.C.T.U. for its excellent work.<sup>6</sup> Neither the Republicans nor the Democrats, however, considered it necessary to take a stand on the prohibition issue in this minor election.<sup>7</sup> When the final results were announced, T. L. Norval, the Republican candidate for Supreme Court Justice received 91,470 votes to 72,442 for J. H. Ames, the Democrat, and 5,821 for F. P. Wigton the Prohibitionist.<sup>8</sup> This small vote indicated that the interest of the temperance groups was concentrated on the Election of 1890, as the prohibition candidate received 9,715 votes in 1888.<sup>9</sup>

While the attention of the temperance groups had been shifted from the local to the state level, this was not true of the liquor interests. In April of 1890, the annexation of South Omaha was being discussed in Omaha. For the annexation to take place, it was necessary for the voters of both communities to approve. One of the

5. Ibid., June 7, 1889, p. 3.

6. Nebraska Party Platforms, pp. 143-4.

7. Ibid., pp. 141-3 and 144-5.

8. Nebraska Blue Book, pp. 198-9.

9. Ibid., pp. 190-1.

arguments used in South Omaha against annexation was the liquor question. In South Omaha, with its large foreign population, the saloons paid a license fee of \$500 and were allowed to remain open on Sunday.<sup>10</sup> This made liquor less expensive and available seven days a week in contrast to six days a week in Omaha, and a \$1,000 license fee. When the election on the issue of annexation was over, the vote in Omaha was 1,535 in favor, 688 opposed; in South Omaha, 727 in favor, 825 opposed.<sup>11</sup> While the liquor issue was not the only issue in the election, it was a very important one and had a great deal to do with the defeat of annexation.

While this controversy was going on in Omaha and South Omaha, the temperance organizations were beginning their campaign for the election in November. Local organizations were holding meetings and sponsoring lecturers throughout the state. In Otoe County, the prohibitionists were circulating all kinds of prohibition propaganda and were enlisting support from every available source.<sup>12</sup> The temperance lecturers even went so far as to campaign in Omaha, the liquor stronghold of the state. A Mrs. Gougar and Francis Murphy, two temperance speakers of the period, lectured in Omaha in their travels through the state.<sup>13</sup>

In July of 1889, the Omaha Daily Herald changed owners and became

10. Omaha Daily World-Herald, April 15, 1890, p. 5.

11. Ibid., May 9, 1890, p. 5.

12. Ibid., April 14, 1890, p. 1.

13. Ibid., May 20 and 22, 1890, p. 8.



the Omaha Daily World-Herald. The first issue of the Omaha Daily World-Herald illustrated the importance of the prohibition issue in Nebraska. While the Omaha Daily Herald had supported the Democratic Party on almost all issues, an editorial in the first issue of the Omaha Daily World-Herald stated that it was not a party newspaper. However, the editors considered the prohibition issue important enough to state that they were opposed to prohibition and in favor of high license.<sup>14</sup>

On October 21, 1889, a meeting was held in Omaha to secure the support of the ministers of the state in behalf of the prohibition amendment.<sup>15</sup> Most of the ministers of the state supported prohibition, but there were a few who did not. The Seven Day Adventists stated that they considered prohibition "class legislation," and opposed to liberty.<sup>16</sup> This was in direct opposition to the Methodists who had been among the first individuals in the state to favor the passage of a prohibitory law.

In addition to rallies and lectures held by the temperance organizations, the prohibition issue was brought before the public through the medium of debates. The first debate was held in Beatrice on June 5, and 7. Samuel Dickey, chairman of the executive committee of the national Prohibition Party, and Reverend Samuel Small of Utah spoke for prohibition. High license was defended by Edward Rosewater,

14. Ibid., July 15, 1889, p. 4.

15. Ibid., October 22, 1889, p. 8.

16. Ibid., October 28, 1890, p. 5.

editor of The Omaha Daily Bee, and John Webster, an attorney from Omaha.<sup>17</sup> While this debate was well attended, it was merely a rehearsal for a larger one to come later.

On October 6, 1890, The Omaha Daily Bee printed a special edition entitled "The Grand Island Debate Supplement" which sold for five cents a copy or one hundred for three dollars. This was an eight page paper reporting the complete text of the debate held the previous day in Grand Island. High license was defended by Edward Rosewater and John Webster, while prohibition was advocated by Governor Larrabee of Iowa, ex-Attorney-General Bradford of Kansas, and Colonel Rankin of Nebraska. Colonel Rankin stated:

I hold the position that the prohibition of the manufacture and sale of intoxicating liquors to be used as a beverage is right in principle and justified upon moral social and business grounds and is sustained by the highest authority in this great republic.

Second: I affirm that a license, high or low, is wrong in principle, does not regulate nor protect society and is a sin against God and a disgrace to this state and to our nation. When a great question of this kind comes before the people we are met with opposition, some of it honest and some of it dishonest. One of the first things that suggests itself to us as disputative is the argument that it is the abuse of intoxicating liquors, and not the use. This argument has served more persons and longer [sic] time as an excuse for the moderate use of intoxicating drink.

Edward Rosewater speaking second, stated:

A grave problem confronts the people of Nebraska.

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17. The Omaha Daily Bee, June 8, 1890, pp. 4-5.

The proposition has been submitted to the voters of this state to embody into the fundamental law of our commonwealth an amendment to prohibit the manufacture and sale of liquor and malt beverages, excepting they may be used for medicinal and mechanical purposes. I hold that it would be a great blunder and a disastrous calamity to the people of this state to do anything of that kind. I maintain that it is an extraordinary proposition to put into the constitution of any state the prohibition of the manufacture and sale of any commodity--whiskey, gun powder, dynamite, or anything else. Our constitution like that of all other states is simply an outline of powers delegated to the representatives and officers that carry on our government, and all the other rights we do not delegate to them are reserved for the people.

Ex-Governor Gardner, the man who signed the first prohibitory law in Massachusetts says: 'The result of the former prohibition law, which by the way I signed while chief magistrate, was so unsatisfactory in its results that it was repealed by decisive majorities in the succeeding legislature, and does not encourage the re-enactment of similar provisions in the organic constitution of the commonwealth. Water will not run higher than the source; laws cannot be successfully enforced unless the decisive majority of popular opinion sustains them, and a law upon the statute book constantly violated, much more a constitutional provision constantly violated, is a menace to popular opinion and the weakening of it. Today every municipality in the state, each of its towns and cities, possesses the power, and many of them exercise it, to vote prohibition within their own boundaries. In such cases, as the law has public opinion behind it, it is generally well executed. In other municipalities where public opinion does not sustain such a restriction the sale of intoxicants is permitted under rules that hedge around such sale by restraints which the wisdom of the governing power imposes, and under high license it produces large excise taxes. Experience of the past seems to teach that local option and high license furnish a practical system regarding this vexed question as admirable as frail and imperfect humanity can devise.' Henry J. Gardner, Boston, Massachusetts, March 19.

General Bradford stated that the prohibitory law in Kansas was a success in curing the evils usually caused by drink. J. L. Webster answered this statement by citing statistics from the dry states proving that there was just as much drunkenness as before prohibition went into effect. Governor Larrabee ended the debate by giving the history of liquor legislation in Iowa and stating that under high license laws, the saloons of Iowa violated the law "every day," but since prohibition had gone into effect, there was very little law violation.<sup>18</sup>

The remainder of this special issue was filled with news of the liquor situation in Nebraska and other states, and also with propaganda against the prohibition amendment.<sup>19</sup>

When the political parties met in 1890 to draw up their platforms for the November election, the majority of them ignored this important issue in the election. The Republican Party platform, the Anti-Monopoly platform, the People's Independent platform, the Union Labor platform, and the State Farmers' Alliance Resolutions contained no mention of either high license or prohibition.<sup>20</sup> The Democrats completely reversed their stand, taken immediately following the passage of the Slocumb Law, and now favored the enforcement of the present high license legislation in opposition to prohibition.<sup>21</sup> There were two prohibition platforms in the election.

18. Ibid., October 6, 1890, pp. 1-4.

19. Ibid.

20. Nebraska Party Platforms, pp. 150-1 and 155-60.

21. Ibid., pp. 148-9.

The Prohibition Party drew up its usual all inclusive platform, in support of its candidates, which advocated everything from the Australian ballot to women suffrage.<sup>22</sup> The Non-Partisan Prohibition Amendment League platform supported the prohibition amendment and nothing else. This platform also made the usual attack on all high license legislation, saying it was ineffective and gave a legal status to crime and vice.<sup>23</sup>

The campaign, which had been going on since April of 1889 in some areas, increased in intensity just before the election. The prohibitionists attacked the Slocumb Law and cited innumerable cases of crime and vice which they attributed to the consumption of liquor. The Democrats and the pro-liquor groups defended high license and attacked prohibition. Lecturers such as Colonel S. C. Allsworth, of the Iowa Anti-prohibition Society, and Governor St. John, former Prohibition Party candidate for president, were imported by the liquor interests and the temperance groups to talk on the prohibition issue.

During the last week in October, several Omaha attorneys for the Non-Partisan Prohibition League appealed to the courts to disqualify the registrations of two thousand foreign born citizens of Omaha, claiming that different candidates took out and paid for their

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22. Ibid., pp. 151-2.

23. Ibid., pp. 153-4.

naturalization papers.<sup>24</sup> While this attempt was not successful, it was designed as a means of eliminating two thousand votes which the prohibitionists felt were sure to be cast against the prohibition amendment.

While the prohibitionists were attempting to disqualify as many liquor votes as possible, they also hired agents to watch for faulty or illegal registrations. One of these agents, John W. Yardley hired at \$2.00 a day, was found to be a defaulting cashier from the American Surety Company of Cleveland.<sup>25</sup> With both sides checking on each other as they were, the Election of 1890, in Omaha at least, should have been one of the most honest elections ever held.

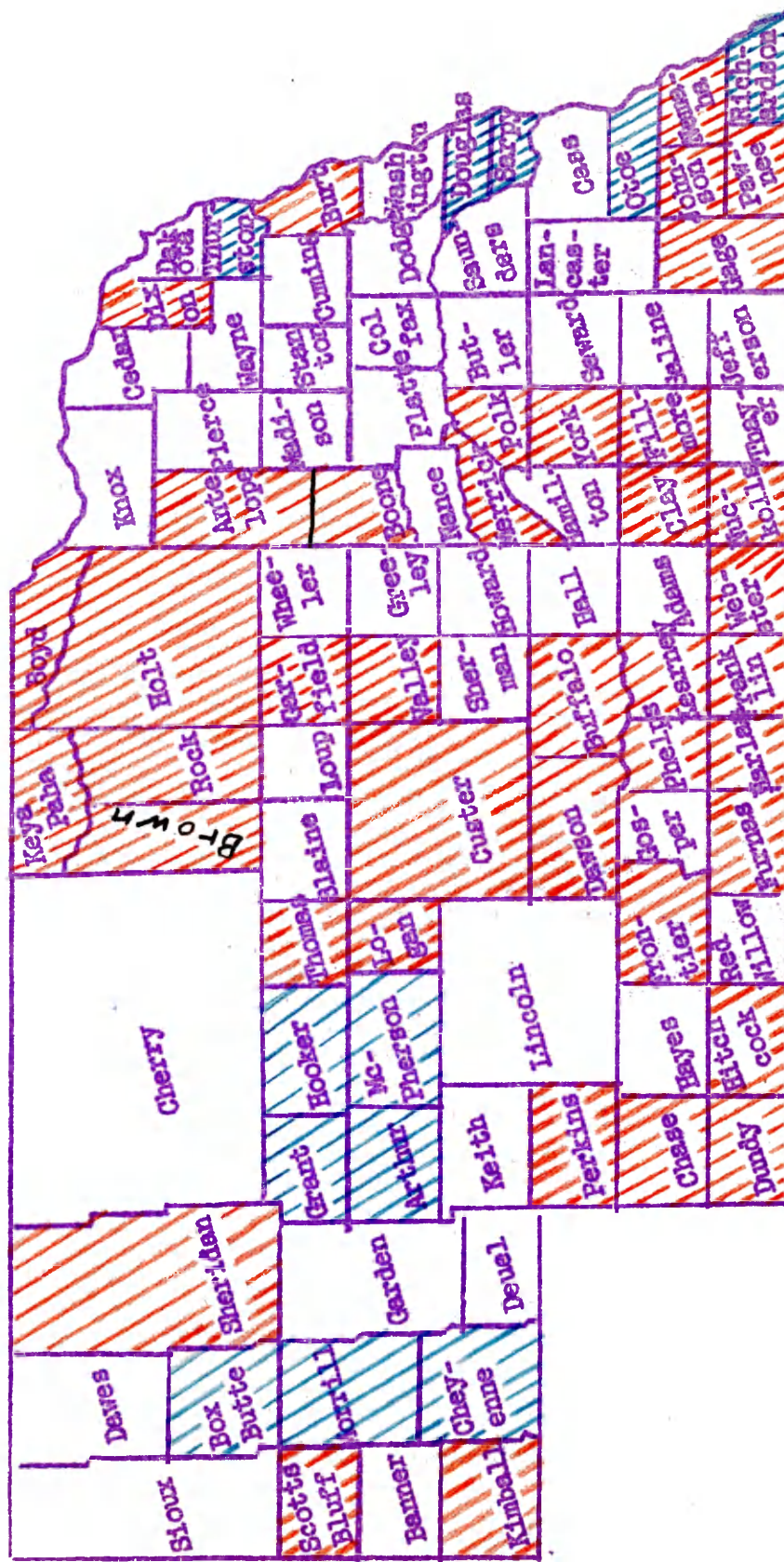
On November 4, 1890, the people of Nebraska went to the polls to decide the fate of the high license and prohibition amendments. On November 19, 1890, fifteen days later, The Omaha Daily Bee published the final results which showed the defeat of both amendments. The final vote on the prohibition amendment was 82,390 in favor, 112,043 opposed to prohibition. Out of 89 counties in the state, only 39 counties favored the prohibition amendment. Prohibition received the biggest defeat in Douglas County where the vote was 1,555 in favor of prohibition to 23,918 opposed. The high license amendment showed a lack of interest on the part of the voters comparable to the slight attention it received in the campaign. The vote on the high

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24. Omaha Daily World-Herald, October 29, 1890, p. 1.

25. Ibid., November 1, 1890, p. 1.

# STATE OF NEBRASKA (Showing Counties)



## THE ELECTION OF 1890

Arthur County Formed a part of McPherson County.  
 Boyd County formed a part of Holt County.  
 Garden County formed a part of Deuel County.  
 Morrill County formed a part of Cheyenne County.



In favor of Prohibition Amendment.



In favor of High License Amendment.

license amendment was 75,515 in favor of it to 91,035 opposed. Only 10 counties in the state gave a majority of the votes on the issue to the support of this amendment. Out of a total vote of 214,738, 194,433 voted on the prohibition amendment and 166,550 voted on the high license amendment.<sup>26</sup> The intent of the State Legislature in placing both the amendments on the ballot together, was that the voters would pass one and defeat the other. In forty counties, or almost half the counties in the state, the voters defeated both amendments. The main reason for this was that all the attention of both sides had been given to the prohibition amendment, while little or nothing was said on the high license amendment. While both these constitutional amendments were going down to defeat, B. L. Paine, the prohibition candidate for governor received 3,676 votes,<sup>27</sup> which indicated that most temperance advocates would not forsake their old party.

Almost as soon as the final results were in, the prohibitionists declared that the "whiskey mob" had made the election illegal by their use of dishonest practices in Omaha. During the last two weeks in December, testimony was taken in Omaha from both sides by the board of fire and police commissioners. Witnesses for the prohibition side stated that they were attacked and beaten by men working for the liquor interests, that some of the women of the W.C.T.U. were insulted as

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26. The Omaha Daily Bee, November 19, 1890, p. 4.

27. Nebraska Blue Book, pp. 200-1.



they distributed campaign literature, that campaign literature favoring the prohibition amendment had been seized and destroyed, and "bogus tickets" opposed to the prohibition amendment and favoring the high license amendment were used by substituting them for the real tickets in the polling places.<sup>28</sup>

The evidence presented by the opponents of prohibition was more impressive due to the high prestige of the witnesses they introduced. Edward Rosewater stated that he was "defiled" and his paper was boycotted by prohibition agitators.<sup>29</sup> Police Chief Seavey stated that he had ninety-two police officers and forty-one special policemen on duty at the polls on election day, and, while several quarrels were started at some polling places, they were "immediately stopped by the police thereby preventing any serious disturbance."<sup>30</sup> Ex-Mayor Broatch, who had proved himself no friend of the saloons during his term of office, testified that as far as he knew, the election was very peaceful.<sup>31</sup> Judges Wakeley and Clarkson, both men of the highest respectable standing, testified that the election was free of all corruption.<sup>32</sup> When both sides had been heard, nothing was done to alter the results of the election. The distinguished array of witnesses

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28. Omaha Daily World-Herald, December 26, 1890, p. 1.

29. The Omaha Daily Bee, December 22, 1890, p. 1.

30. Ibid., December 22, 1890, p. 1.

31. Ibid., December 23, 1890, p. 1.

32. Ibid., p. 1.

presented by the liquor interests made the prohibitionists look like foolish fanatics who did not wish to abide by the decision of the people, and the whole dispute was dropped.

The Election of 1890 proved that the people of the state were not ready to give up their "inalienable right" to drink what they wished. It also proved that despite the enormous number of voters claimed by the temperance organizations, these temperance organizations could not produce many votes when they were given a chance to put into effect a prohibition amendment. The defeat of the high license amendment shows a lack of interest and some confusion on the part of the voters. The intent of the State Legislature, in submitting both amendments to the people, was to secure the passage of one. Only in Douglas County did the high license amendment secure the approximate same number of favorable votes as were cast against the prohibition amendment. The fact that the people had spoken against state prohibition did not stop the efforts of the temperance enthusiasts, but only made them redouble their efforts.

## CHAPTER IX

### CONCLUSION

The defeat of the prohibition amendment by the voters of the state, in November of 1890, marked the conclusion of the first period of the prohibition contest in Nebraska. Starting in 1881 with the passage of the Slocumb High License Law by the State Legislature, the opinion of the legislators gradually changed in favor of the prohibitionists, culminating in the passage of Senate Bill No. 31 in 1889.

In 1880, the prohibitionists had set out to secure the passage of a prohibition amendment by the State Legislature and its acceptance by the voters of the state. Although the legislators would not pass a prohibition amendment, they did try to quiet the boisterous prohibition advocates by passing instead, the Slocumb High License Law. This law was attacked by temperance organizations as giving a legal basis to crime and vice, as they had pledged themselves to accept nothing less than complete prohibition.

On the other hand, the liquor faction of the state attacked the Slocumb Law because they felt it was uncalled for. Actually the law was neither.

The State Legislature had passed the Slocumb Law in an attempt to satisfy both factions. The legislators refrained from passing a

prohibitory amendment which would have completely destroyed the liquor industry of the state, while at the same time, the legislators tried to placate the prohibitionists by including such features as making saloon keepers responsible for damages caused by their sales, higher license fees which it was thought would lessen the number of saloons, a form of local option which gave elected members of the city and town councils the right to prohibit the sale of liquor, and made suits for damages against saloon keepers easier by establishing less stringent rules of evidence in proving guilt.

The sections of the Slocumb Law making saloon keepers responsible for damages was tantamount to prohibition had it been used properly, but the prohibitionists were so busy finding fault with the law they did not seem to notice this. By lending or giving victims of liquor the money necessary to bring suit against the saloon keepers, the prohibitionists could have soon supported so many suits, that the saloon keepers would have been driven out of business, but this feature of the law was overlooked. The temperance supporters in most of the towns and cities did, however, keep careful watch over the saloon keepers to see that there was the strictest law enforcement.

While the Slocumb Law was by no means perfect, it was much better than might have been expected considering the short time which was spent in drawing it up and getting the approval of the legislature. The main faults of the law were that it did not give the people living outside the towns of the state the privilege of voting for

licensing authorities who could prohibit the sale of liquor, it placed too much of the enforcement power in the hands of the local authorities who were sometimes very lenient or indifferent in applying the law. Another thing which might be listed as a fault was the low license fee. The temperance people had some justification for stating that the only change the law affected was to raise the price of honesty. The higher license fee cut down the number of saloons in only a few places in the state.

The Republican Party was the majority party during the period 1880 to 1890. The Republicans avoided taking a stand on either high license or prohibition until the Election of 1886, although the fact that they passed the Slocumb Law in 1881 would seem to indicate they were in favor of high license. When they finally came out in favor of passing a bill submitting a prohibition amendment to the people, it was not that the Republicans were in favor of prohibition, but that they wanted to get the issue out of the legislature and felt that this was the only way to do it.

The Democrats, in contrast to the Republicans, made their views known immediately. At first they were opposed to any form of regulation placed on the liquor industry, but later they decided that high license was the proper means of regulating the saloons. Since they changed their view on this issue after they had seen that the Slocumb Law did not fulfill the dire predictions on it, the Democrats probably decided it was necessary to support high license to defeat prohibition.

The other minor parties of the state usually avoided the prohibition issue because they were formed for a cause of their own, which was considered more important. Thus only the major parties together with the Prohibition Party had any effect on this controversial issue during this period.

The diverse number of issues supported from time to time by the platforms of the Prohibition Party was one of the reasons for the poor showing it made in the state elections during the years 1880 to 1890. The fact that the usual type of voter is very loathe to desert his old party to support a new third party is another reason for the small number of votes gathered by the Prohibition Party. This fact is well illustrated by the number of votes the prohibition amendment received in 1890. This defeated amendment received 82,390 favorable votes, while the best the Prohibition Party had ever been able to do was in the Election of 1888, when its candidate for governor received 9,715. This meant that there were over 70,000 registered voters in the state who would support prohibition if they did not have to vote against their regular party to do it.

In the Election of 1890, the people also voted on a high license amendment and defeated it. The only purpose the submission of this amendment to the people served was to show the legislators disapproval of the prohibition amendment, and their wish to present the people of the state with an alternative. The fact that there was no need for an amendment to the state constitution to enable the legis-

lature to pass high license legislation had been amply illustrated by this time. Within six months after the passage of the Slocumb Law by the legislature, the Supreme Court ruled, in the test case of *Plenler v. The State*, that the Slocumb High License Law was perfectly legal in every respect. There may have been the opinion in some quarters that the passage of a high license amendment would establish high license as the policy of the state, and eliminate the possibility of the acceptance of a prohibitory law. This, however, was rather absurd as any prohibition amendment, before it could have been put into effect, would have repealed any high license amendment already in effect as the two were completely opposed to each other. This high license amendment would probably have been passed if it had been given some support in the campaign, as the dominate feeling in the state seemed to be more along the high license line than in favor of prohibition.

The best conclusion that can be drawn from this eleven year controversy is that the people of Nebraska were not ready for prohibition, and that a great deal of temperance propaganda would be necessary in order to convince them that prohibition was desirable.

Thus the decade under consideration started out with almost no regulation and ended with a law which effectively regulated the sale of intoxicating liquor in the state. The voters of the state expressed their disapproval of prohibition, but, at the same time, refused to give their wholehearted support to a high license amendment.

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